ALLEGATIONS OF SELECTIVE PROSECUTION: THE EROSION OF PUBLIC CONFIDENCE IN OUR FEDERAL JUSTICE SYSTEM

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

AND THE

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

OCTOBER 23, 2007

Serial No. 110–61

Printed for the use of the Committee on the Judiciary

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ALLEGATIONS OF SELECTIVE PROSECUTION: THE EROSION OF PUBLIC CONFIDENCE IN OUR FEDERAL JUSTICE SYSTEM

TUESDAY, OCTOBER 23, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittees met, pursuant to notice, at 10:10 a.m., in Room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security) presiding.

Present from the Subcommittee on Crime, Terrorism, and Homeland Security: Representatives Scott, Waters, Delahunt, Johnson, Jackson Lee, Davis, Baldwin, Sutton, Forbes, Gohmert, Coble, Chabot, and Lungren.

Present from the Subcommittee on Commercial and Administrative Law: Representatives Conyers, Sánchez, Johnson, Lofgren, Delahunt, Watt, Cohen, Cannon, Jordan, and Keller.

Staff present: Bobby Vassar, Chief Counsel, Subcommittee on Crime, Terrorism, and Homeland Security; Michone Johnson, Chief Counsel, Subcommittee on Commercial and Administrative Law; Eric Tamarkin, Majority Counsel; Mario Dispenza, Majority Counsel; and Veronica Eligan, Professional Staff Member.

Mr. SCOTT. The hearing will come to order.

Good morning. I am pleased to open this hearing on Allegations of Selective Prosecution: The Erosion of Public Confidence in our Federal Judicial System.

For some months now, we have been looking at the issue of whether some United States attorneys were fired because of their unwillingness to bring politically based prosecutions. Of course, if there is evidence that some U.S. attorneys were fired for their failure to bring politically based prosecutions, that leaves the question of whether any of those not fired kept their jobs because they were willing to bring such prosecutions.

Today's hearing focuses on this aspect of the question as the continuing investigation of the issue of whether there is inappropriate politicization within the Department of Justice and looking at instances in which prosecutions appear to have been politically motivated.

United States Supreme Court Justice Robert Jackson once said, "While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst. Therefore, he should have as nearly as possible a detached and impartial view of all groups in his community."

Unfortunately, however, evidence has come to light that the United States Department of Justice may be falling far short of holding a detached and impartial view. Allegations have risen that U.S. attorneys have aggressively investigated political opponents for activity that was only technically criminal or not even criminal at all, then timed the announcement of indictments to affect elections.

U.S. attorneys have also been accused of selectively prosecuting only Democrats for activities in which Republicans have engaged in similar activities. In fact, the latest statistics in one study that we will hear today showed that of 375 investigations of political candidates and officeholders initiated under the Bush administration's Department of Justice, 80 percent have been against Democrats, and this disparity in the department's focus calls its objectivity into question.

We have researched the trend and uncovered a number of disturbing incidents that raise questions as to the department's impartiality, and since we announced plans to conduct this hearing, a steady flow of cases has come to our attention that deserve attention, but time prohibits us from detailing them fully.

We will hear about a number of specific cases today, but I want to focus briefly on just one case that highlights both the doubtfulness and the selectiveness of prosecutorial activity.

Paul Minor was a major Democratic contributor in Mississippi and a trial lawyer who had won two major lawsuits against companies that may have been involved with the U.S. attorney. He was indicted for guaranteeing loans and providing houses for Mississippi Supreme Court Justice Oliver Diaz. The justice had recently won an election to the Mississippi high court over a close friend of the U.S. attorney's and was indicted on corruption charges for his dealings with Paul Minor.

Like a number of other cases we will hear today, the indictments were announced 90 days before a major election, in this case the 2003 gubernatorial election, and that announcement was widely seen as an attempt to paint the Democratic Party as corrupt. The dubiousness of the allegations comes from the fact that although there were, in fact, financial dealings between Paul Minor and the justice, there was no evidence of influencing the justice or even an attempt to influence him.

The prosecution offered no evidence that the justice presided over any cases that Paul Minor brought before the court. Moreover, investigators never even interviewed the justice's fellow jurists to determine whether he had improperly influenced any cases involving Paul Minor or anyone associated with him.

And, finally, the activity for which Paul Minor was indicted had been commonplace in Mississippi, and prosecutions for such impropriety had never been brought in the past. Ultimately, Paul Minor and the justice were acquitted of any charges of activity between

them. However, the acquittal was long after the Mississippi gubernatorial race, which was won by the Republican candidate.

The allegation of selectivity in the case stems from the fact that the U.S. attorney apparently ignored activity of a major Republican contributor and brother-in-law to a Republican U.S. senator. The Republican contributor also made loans to the justice and was Paul Minor's co-owner of the very building that the justice used as his residence for which Paul Minor was indicted. Yet the Republican contributor was not even investigated, let alone indicted.

In fact, when the investigating FBI agent brought the evidence about this very Republican contributor to the attention of the U.S. attorney, the agent was transferred to an antiterrorism unit in Guantanamo Bay, Cuba, and was replaced by an agent who had contributed to the Republican Governor Haley Barbour's campaign.

Mr. Minor had entered a lengthy and articulate motion to dismiss the charges against him, which the trial court did not grant. However, without objection, I would like to enter Mr. Minor's Motion to Dismiss on the record so the details of the allegation here can be fully recognized.

This is just one of a growing list of cases in which U.S. attorneys have allegedly attacked political rivals, while allowing similar activity by its allies to go unchallenged. It is incumbent upon us as part of our congressional oversight responsibilities to determine to what extent these determined allegations are true, and that is why we are holding this hearing.

I would like to now recognize my friend and Virginia colleague, the distinguished Ranking Member of the Subcommittee, the Honorable Randy Forbes who represents Virginia's Fourth Congressional District.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. Chairman, today is another sad and embarrassing day for the Judiciary Committee. Rather than focusing on important issues to the American people, such as the rise in violent crime, the threat of terrorism, violence on college campuses, the increase in international gangs, the invasion of Chinese espionage agents into our country, the majority is wasting our time to try and create smoke where there is no fire and deal once again with politics, politics and politics.

It is sad to see how the historical traditions surrounding the Judiciary Committee have been jettisoned in favor of partisanship, all to the detriment of the American people. Is it any wonder why Congress's approval ratings are so low right now?

So we bring in our usual cadre of witnesses, and we have hearings on things that we never did before: ongoing trials. We bring people in here, and then we limit the cross-examination to these fine men to 5 minutes apiece. Wouldn't that be wonderful if you could be in a trial setting, some of the very trials that the Chairman mentioned earlier, but you could say to the attorneys who were doing the cross-examination, "But you are only going to have 5 minutes to ask these people any questions," and, also, it would be good because prosecutors have barred most of these cases from coming in here and putting on their side of the story.

This hearing is not a review of the abuse of prosecutorial discretion. We have raised that for months now. If it were, we would be

examining the Duke Lacrosse players where the defendants were fully exonerated and the prosecutor disbarred.

Some of these cases, we have situations where you had individuals brought before a court, the judge tried the case, the jury found them guilty, they were sentenced, they have an appeals process to go through, and yet we want to look at that. But in other cases, we have situations, as in the Nifong case and the Duke players, where they have been completely exonerated.

Have we listened to that? Have we looked at that? No. Have we heard anything about the political prosecutorial discretion that was used in the Texas case against Tom DeLay? No. Have we looked at the situation in Louisiana where this Subcommittee went down, refused to take testimony on it, but they actually came to another hearing we had, and the concern there was that individuals, the police and members of the chamber of commerce were saying that the prosecutors were not prosecuting corruption, that, in fact, only 12 percent of the people arrested or less than 12 percent ever went to jail.

But we do not want to listen to those cases. Instead, we are sitting here while the majority embraces baseless claims made by criminal defendants who have no other forum in which to allege prosecutorial misconduct. This is not a surprise. These ridiculous claims have turned the Judiciary Committee into judge and jury of criminal prosecutions. I cannot think of a more inappropriate abuse of this great institution.

In its zeal to make mountains out of molehills, the majority is questioning the conviction of former Alabama Governor Don Siegelman, who was found guilty beyond a reasonable doubt of bribery, mail fraud and conspiracy by a jury and sentenced to 7 years in prison. Governor Siegelman was found to be a corrupt politician who sold his public office for money. He was prosecuted by a career prosecutor. He was found guilty by a jury of his peers and sentenced by a Federal judge with a record of fairness.

I ask unanimous consent, Mr. Chairman, that statements by U.S. Attorney Leura Garrett Canary and Acting U.S. Attorney Louis V. Franklin be submitted for the record.

Mr. SCOTT. Without objection.

[The statements of Ms. Canary and Mr. Franklin follow:]

PRESS RELEASE

Office of the
United States Attorney
Middle District of Alabama
Leura Garrett Canary

P. O. Box 197 • Montgomery, Alabama 36101 • 334/223-7280

Contact Bertha Moore
Acting Press Officer
(334) 223-7280
May 16, 2002

The following is a statement from United States Attorney Leura Garrett Canary:

"There has been recent speculation in the press as to whether I will recuse myself from certain matters that may or may not be pending in my office. While it would not be appropriate for me to discuss any investigations that may or may not be under review in my office, I can tell you that in circumstances in which recusal issues are raised, I will discuss the propriety of my involvement with the Department of Justice and have done so in connection with recent inquiries. As to any matters pertaining to any current investigation of state officials or matters of state government which may or may not be underway, the Department of Justice has advised me that no actual conflicts of interest exist. However, out of an abundance of caution, I have requested

Alabama Rules of Professional Conduct, Rule 3.6, requires a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

that I be recused to avoid any question about my impartiality.

It is of the utmost importance to me, as a United States Attorney, that the people in the Middle District of Alabama and throughout the State have confidence in the manner in which matters are handled by me and by the office I serve and that no one has a basis under which to question the integrity of any investigation undertaken by my office. To that end, the Department has assigned responsibility for the supervision of any investigation regarding state officials or matters of state government to First Assistant United States Attorney Charles R. Niven. In addition, if such investigation were to develop or exist, the Department's Criminal Division, Public Integrity Section, will play a significant role in the conduct of such investigation. I am confident these measures adequately address any concerns the public may have."

Alabama Rules of Professional Conduct, Rule 3.6, requires a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

Department of Justice

Acting United States Attorney Louis V. Franklin, Sr.
Middle District of Alabama

FOR IMMEDIATE RELEASE

www.usdoj.gov/usao/alm

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STATEMENT OF LOUIS V. FRANKLIN, SR.,
ACTING U.S. ATTORNEY IN THE SIEGELMAN/SCRUSHY PROSECUTION

"Neither I nor the U.S. Attorney's Office for the Middle District of Alabama (MDAL) have heretofore seen the affidavit referenced in Time's article, initially entitled "Rove Linked to Prosecution of Ex-Alabama Governor," and later changed to "Rove Named in Alabama Controversy," stated Louis V. Franklin. "Thus, I cannot speak to the affidavit itself or to the specific allegations made by Dana Jill Simpson except to say that its timing is suspicious, and other participants in the alleged conversation say it didn't happen, most notably Terry Butts, who represented Richard Scrushy during the trial of this case.

I can, however, state with absolute certainty that the entire story is misleading because Karl Rove had no role whatsoever in bringing about the investigation or prosecution of former Governor Don Siegelman. It is intellectually dishonest to even suggest that Mr. Rove influenced or had any input into the decision to investigate or prosecute Don Siegelman. That decision was made by me, Louis V. Franklin, Sr., as the Acting U.S. Attorney in the case, in conjunction with the Department of Justice's Public Integrity Section and the Alabama Attorney General's Office. Each office dedicated both human and financial resources. Our decision was based solely upon evidence in the case, evidence that unequivocally established that former Governor Siegelman committed bribery, conspiracy, mail fraud, obstruction of justice, and other serious federal crimes.

Our decision to prosecute Don Siegelman and Richard Scrushy was based upon evidence uncovered by federal and state agents, as well as a federal special grand jury which convened in the case. The investigation was precipitated by evidence uncovered by a Mobile investigative reporter, Eddie Curran, and a series of stories written by him. The investigation began about the time an article appeared in the Mobile Press-Register alleging an improper connection between then-Governor Siegelman and financial supporter/businessman/lobbyist, Clayton "Lanny" Young, months before Leura Canary was appointed as the U.S. Attorney for the MDAL.

When the investigation first began, Leura Canary was not the U.S. Attorney for the MDAL. Initially, the investigation was brought to the attention of the Interim U.S. Attorney, Charles Niven, a career prosecutor in the U.S. Attorney's Office. Niven had almost 25 years of experience as an Assistant U.S. Attorney in the office prior to his appointment as Interim U.S. Attorney upon U.S. Attorney Redding Pitt's (currently attorney of record for Defendant Siegelman in this case) departure.

Ms. Canary became U.S. Attorney in September 2001. In May 2002, very early in the investigation, and before any significant decisions in the case were made, U.S. Attorney Leura Canary completely recused herself from the Siegelman matter, in response to unfounded accusations that her husband's Republican ties created a conflict of interest. Although Department of Justice officials reviewed the matter and opined that no conflict, actual or apparent, existed, Canary recused herself anyway to avoid even an appearance of impropriety. I, Louis V. Franklin, Sr., was appointed Acting U.S. Attorney in the case after Charles Niven retired in January 2003. I have made all decisions on behalf of this office in the case since my appointment as Acting U.S. Attorney. U.S. Attorney Canary has had no involvement in the case, directly or indirectly, and has made no decisions in regards to the investigation or prosecution since her recusal. Immediately following Canary's recusal, appropriate steps were taken to ensure that she had no involvement in the case. Specifically, a firewall was established and all documents relating to the investigation were moved to an off-site location. The off-site became the nerve center for most, if not all, work done on this case, including but not limited to the receipt, review, and discussion of evidence gathered during the investigation.

After Canary's recusal, the investigation proceeded much like any other investigation. Federal and state agents began tracking leads first developed by investigative reporter Eddie Curran, leads that eventually led to criminal charges against local architect William Curtis Kirsch, Clayton "Lanny" Young, and Nick Bailey, an aide to the former Governor. Kirsch, Young, and Bailey pled guilty to informations charging violations of federal bribery and/or tax crimes on June 24, 2003.

Armed with cooperation agreements from Bailey, Young and Kirsch, the investigation continued. In June 2004, a special grand jury was convened to further assist in the investigation. An indictment was returned under seal against Mr. Siegelman and ex-HealthSouth CEO Richard Scrushy on May 17, 2005. The first superseding indictment was filed and made public on October 26, 2005, charging Siegelman, Scrushy, Siegelman's former Chief of Staff Paul Hamrick, and Siegelman's Transportation Director Gary Mack Roberts. Immediately after the indictment was announced, Messrs. Scrushy and Siegelman publicly denounced the indictment and personally attacked the prosecutors. Those attacks have continued throughout the case and have now escalated to charges that Karl Rove had something to do with this investigation or prosecution. These charges are simply untrue.

The indictment was solely the product of evidence uncovered through an investigation that began before Leura Canary became U.S. attorney and continued for three years after she recused herself. I have never spoken with or even met Karl Rove. As Acting U.S. Attorney in the case, I made the decision to prosecute the former Governor. My decision was based solely on the evidence uncovered by federal and state agents, as well as the special grand jury, establishing that Mr. Siegelman broke the law.

During the investigation, I consulted with career prosecutors in the Public Integrity Section of Main Justice to obtain guidance on the prosecution of the former Governor, but I alone maintained the decision-making authority to say yea or nay as to whether or not the U.S. Attorney's Office for the MDAL would proceed with the prosecution. Contrary to how the prosecution is portrayed in Adam Zagorin's Time article, rather than the U.S. Department of

Justice pushing the MDAL to move forward with the prosecution of former Governor Siegelman, the push has always come from the Middle District's U.S. Attorney's Office and has been spearheaded by me as the Acting U.S. Attorney in the case. My sole motivation for pushing the prosecution was a firmly held belief, supported by overwhelming evidence and the law, that former Governor Siegelman had broken the law and traded his public office for personal and political favors. Ultimately, a jury of former Governor Siegelman's peers, consisting of men and women, African-American and Caucasian, agreed and convicted the former Governor of conspiracy, accepting bribes, and obstructing justice.

I am a career Assistant U.S. Attorney in the Middle District of Alabama. I have served under both Democratic and Republican appointees. I take my role as a government prosecutor and my ethical obligations as a lawyer very seriously. I value my integrity above all else. I would never pursue a prosecution for political reasons, nor would I bring any prosecution not warranted by the evidence or the law. That simply did not happen here, no matter what anyone prints.

In the public interest, one other matter needs to be addressed. Former Gov. Siegelman and Richard Scrushy and others speaking on their behalf have made public claims that the sentence recommended by the United States is excessive. The sentence recommended is appropriate under the advisory U.S. Sentencing Guidelines when all of the relevant conduct associated with this case is weighed as required by the Guidelines and well established federal law. As in all other cases prosecuted by this office, the recommended sentence is reasonable under the Guidelines and existing federal law. The recommended sentence, in brief, is calculated as follows:

base offense level for bribery - 10;
amount of loss and/or expected gain - add 20 levels;
more than one bribe - add 2 levels;
obstruction of justice - add 2 levels;
organizer/leader in the offense - add 4 levels;
upward departure for systematic pervasive government corruption - add 4 levels.

The resulting adjusted guideline level of 42 and criminal history category of I results in a guideline range of 360 months to life imprisonment. Specific justification and explanation for this recommendation is fully articulated in the United States Sentencing Memorandum (Document Number 589) and United States Motion for Upward Departure for Systematic Pervasive Corruption (Document Number 591). These documents are available through accessing the Court's Pacer system."

Mr. FORBES. Like any defendant who has been found guilty and sentenced to jail, Siegelman is now alleging that he was prosecuted for political reasons. His credibility is no different than any other criminal with a motive to say anything to get out of prison.

What is unusual today is that the majority is conducting an investigation based on these claims. The majority's misguided reliance on these claims is proven by their decision not to call Jill Simpson as a witness in this hearing. She is the sole witness who made the initial allegation about a single telephone call 5 years after the fact, 11 months after Siegelman's conviction and 1 month before his sentencing. Two individuals who she alleged were on the telephone have submitted affidavits contradicting her claim.

Mr. Chairman, I ask unanimous consent that these statements be included in the record.

Mr. SCOTT. Without objection, so ordered.

[The statements of Mr. Riley and Mr. Lembke follow:]

AFFIDAVIT

Comes now the undersigned Affiant and, after having been duly sworn, states on oath to the best of my recollection, information, and belief, the following statements set forth in paragraphs one through six are true and correct:

My name is Robert R. Riley Jr. I am an attorney practicing law in Birmingham, Alabama at the law firm of Riley & Jackson, P.C. I graduated from the University of Alabama in 1988 with a degree in Economics, Yale Law School in 1991, with a J.D. degree, and the University of Cambridge (England) in 1992, with a LL.M. degree. My father, Bob Riley, was elected Governor of Alabama in November, 2002 and was re-elected Governor in November, 2006.

I have no memory of being on a phone call with Jill Simpson ("Ms. Simpson") on November 18, 2002. Furthermore, I do not believe a phone call occurred that involved Ms. Simpson, former Alabama Supreme Court Justice Terry Butts ("Mr. Butts"), Bill Canary ("Mr. Canary"), and myself on November 18, 2002 in which Mr. Butts allegedly stated that he would confront former Alabama Governor Don Siegelman ("Mr. Siegelman") with photographs of a political prank, described in the following paragraph, and would attempt to convince Mr. Siegelman to concede the election based on said photographs, or that Mr. Canary allegedly made statements to the effect that "his girls" would take care of Mr. Siegelman, or that "Karl" had spoken to, or gone over to, the Department of Justice and that the Department of Justice was pursuing, or would pursue, a case against Mr. Siegelman.

I have never been told by Mr. Butts, or anyone else, that Mr. Butts spoke with Mr. Siegelman on November 18, 2002, and convinced Mr. Siegelman to concede the 2002 campaign for Governor. Other than from Ms. Simpson's Affidavit, I have never heard anyone say that Mr. Siegelman conceded the election in exchange for not releasing photographs of a political prank involving Democratic operatives putting up Riley for Governor signs at a KKK rally. Other than in Ms.

Simpson's testimony of September 14, 2007, I have never heard that Mr. Siegelman conceded the election in exchange for immunity from prosecution. I have never made a statement to Ms. Simpson that there was an agreement between Mr. Butts and Mr. Siegelman regarding Mr. Siegelman's concession of the 2002 campaign for Governor.

I do not believe that I have ever met or spoken with Judge Mark Fuller ("Judge Fuller"). Other than what I have read in Ms. Simpson's testimony and the documents that I understand she produced at the time of her testimony, I have no knowledge of any ownership in any business or alleged grudges Ms. Simpson says Judge Fuller holds against Mr. Siegelman, and I never discussed such with Ms. Simpson. I have spoken with Stewart Hall ("Mr. Hall") since Ms. Simpson's testimony was released. Mr. Hall has told me that, to the best of his recollection, he has never met or spoken with Judge Fuller at any time in his life, nor does he have knowledge of any businesses in which Judge Fuller has been involved or any alleged grudge that Judge Fuller has against Mr. Siegelman. Ms. Simpson stated in her testimony that she understood that Judge Fuller was in "college" at "Alabama" with Stewart and me. It is my understanding based on an internet search that Judge Fuller graduated from college at the University of Alabama in 1982. I began college at the University of Alabama in 1984. Mr. Hall has told me that he began college at the University of Alabama in January, 1985.

I have never requested Karl Rove's ("Mr. Rove") assistance to "speed up" checks for any of Ms. Simpson's clients, or his assistance on any other federal matter, nor have I ever told Ms. Simpson that I was doing so. Ms. Simpson's belief that I e-mailed a copy of a document to Mr. Rove regarding a matter associated with a FEMA appeal is not correct. The document that Ms. Simpson has discussed in her testimony was sent to Mr. Karl Dix, who is an attorney in Atlanta,

Georgia, practicing with the law firm of Smith, Currie, and Hancock, who provided assistance with the appeal. Furthermore, I did not tell Ms. Simpson that Mr. Rove was assisting with this project.

I have not been told or provided information that Mr. Siegelman would be prosecuted if he ran for political office again after the 2002 election; that Mr. Rove had spoken to someone about prosecuting Mr. Siegelman; that Judge Fuller was going to be appointed the Judge of the Siegelman-Scrushy case; that a case would be brought against Mr. Siegelman and Mr. Scrushy or that specific charges were going to be brought against them; nor have I made statements to this effect to Ms. Simpson. Furthermore, at no time have I participated, in any manner or way, in the criminal prosecutions of Mr. Siegelman or Mr. Scrushy.

Robert R. Riley, Jr.

Robert R. Riley, Jr.

In Jefferson County, Alabama, on the 22nd day of October, 2007, before me, a Notary Public in and for the above-state and county, personally appeared Robert R. Riley, Jr., known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he or she executed said instrument for the purposes therein contained as his of her free and voluntary act and deed.

Natalie Bastem

Notary Public
My commission expires: 03/02/10

STATE OF ALABAMA)

JEFFERSON COUNTY)

AFFIDAVIT OF MATTHEW H. LEMBKE

My name is Matthew H. Lembke. I am a partner in the Birmingham, Alabama office of Bradley Arant Rose & White LLP. I received my law degree from the University of Virginia School of Law in 1991. Following law school, I clerked for Judge J. Harvie Wilkinson III on the United States Court of Appeals for the Fourth Circuit and for Justice Anthony M. Kennedy on the Supreme Court of the United States. I joined Bradley Arant in 1993 and have practiced at the firm continuously since then.

In the fall of 2002, I served as counsel to the Riley for Governor campaign. The results of the 2002 Alabama gubernatorial election were very close. Bob Riley, then a congressman, won by approximately 3,000 votes over Governor Don Siegelman. I understand it to have been the closest gubernatorial election in Alabama history.

Due to the closeness of the election, Governor Siegelman initially refused to concede and asked for a recount of the ballots. What ensued was a legal controversy involving numerous state courts that extended over a 13-day period until Governor Siegelman conceded on Monday, November 18, 2002.

In my role as campaign counsel, I led the Riley campaign's efforts in that post-election legal controversy. Within a day or two of the election, the campaign also retained former Alabama Supreme Court Justice Terry Butts, who had been the Democratic nominee for Alabama Attorney General in 1998, to join me in leading the legal effort. From the time that Justice Butts joined the effort on or about November 7,

2002, until Governor Siegelman's concession, Justice Butts and I worked closely together on all the legal issues.

I have reviewed the affidavit executed by Jill Simpson with regard to certain alleged events occurring on November 18, 2002. I have also reviewed Ms. Simpson's testimony to representatives of the House Judiciary Committee on September 14, 2007.

I arrived at Rob Riley's law office around 9:00 a.m. on November 18, 2002. Justice Butts and I were physically located in Rob Riley's personal office during most of the day. Rob's personal office is a large room with a desk at one end and a sofa and conference table at the other end. Rob was also present in that office throughout the day. Justice Butts, Rob, and I worked on various legal issues throughout the morning and into the early afternoon.

In the early afternoon of November 18, we learned from Governor-elect Riley's campaign manager, Toby Roth, that a representative of Governor Siegelman had called to determine where Governor Siegelman could call Governor-elect Riley late that afternoon. For the next few hours, we sat in Rob's office waiting to see if the Siegelman call would take place.

Late that afternoon, Governor Siegelman placed the call to Governor-elect Riley and stated that he was conceding the election. Along with Justice Butts, Rob Riley, Toby Roth, and others, I listened to Governor-elect Riley's end of the conversation. When the call ended, the room erupted in celebration, and all of us left shortly thereafter to accompany Governor-elect Riley to the location where he made his victory speech.

I do not recall the phone call that Ms. Simpson claims took place between her, Justice Butts, Bill Canary, and Rob Riley at 10:52 am on November 18, 2002, for 11

minutes. I did not leave the presence of Justice Butts and Rob Riley for more than a few minutes at any point from the time I arrived at Rob's office until we left for the victory speech at the end of the day. I do not believe that I was out of Justice Butts' and Rob Riley's presence for 11 consecutive minutes at or around 10:52 a.m. that day. If there had been a conference call conducted by speaker phone in Rob's office as described by Ms. Simpson, I believe that I would have heard it. I do not recall any such call taking place while I was there. In addition, Bill Canary was not at Rob's office on November 18, 2002, nor do I recall that he participated in any conference call involving me at any point during the post-election controversy.

The notion that Governor Siegelman would have conceded the governorship because a photo existed of a Democratic operative planting Riley signs at a Ku Klux Klan rally in Scottsboro, Alabama after the election strikes me as absurd. Indeed, the first time I ever recall hearing about Riley signs at a Ku Klux Klan rally in Scottsboro, Alabama was when I read a press account of Ms. Simpson's affidavit.

I was with Justice Butts on November 18 virtually continuously from approximately 9:00 a.m. until Governor-elect Riley's victory speech, and I am unaware of him having had any meeting or phone call with Governor Siegelman or any representative of Governor Siegelman to discuss a concession.

During the post-election legal controversy, there were several lawyers around the state who served as co-counsel for the Riley campaign on various post-election legal matters. Jill Simpson was not one of those lawyers. In fact, the first time I ever recall hearing Ms. Simpson's name was when I read an account of her affidavit on the *New York Times* website.

Mr. FORBES. I also ask unanimous consent that the statement of Governor Riley's election attorney be submitted for the record.

Mr. SCOTT. Without objection, so ordered.

[The prepared statement of Mr. Butts follows:]

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STATEMENT OF TERRY LUCAS BUTTS

My name is Terry Lucas Butts. I received my law degree in 1968 from the University of Alabama Law School. Following law school, I practiced law in Elba, Alabama, for eight years. I then became a Circuit Court Judge, ultimately serving some 23 ½ years as a judge, before retiring from the Alabama Supreme Court in 1998 to run as the Democratic nominee for Attorney General of Alabama against then appointed incumbent Attorney General Bill Pryor. After losing the 1998 race to Attorney General Pryor by three-tenths of one percent, I returned to the active practice of law, practicing in Troy, Alabama, in ultimately an eight person law firm. I left this firm and practice in 2005, returning to my home town of Luverne, Alabama, where I resided, to open my separate law practice, which continues today.

Since leaving the judicial bench, among my clients have been Governor Bob Riley, Former Alabama Chief Justice Roy Moore, and Former CEO of HealthSouth Corporation, Richard Scrushy, in respective matters.

After the November 2002 general election in Alabama, then challenger Bob Riley prevailed over then incumbent Governor Don Siegelman by some 3,100 votes. Governor Siegelman immediately began a legal challenge to obtain a recount of the votes. Along with Attorney Matt Lembke of the firm Bradley/Arant in Birmingham, I was employed by Governor-elect Bob Riley to resist the recount challenge.

For nearly two weeks, co-counsel Matt Lembke and I (along with other attorneys who assisted locally in various counties, but those attorneys did not include Dana Jill Simpson) "punched and counter-punched" all over the State, with Governor Siegelman's attorneys Joe Espy and Bobby Segall, both of Montgomery, and "Boots" Gale of Birmingham, as to Governor Siegelman's efforts to obtain vote recounts and our efforts to block any recounts.

I take up Mrs. Simpson's allegations involving me as follows:

1. Ms. Simpson alleges a conference call occurring on November 18, 2002. As I recall that day, Attorney Matt Lembke and I arrived within minutes of each other at approximately 9:00 am, at Rob Riley's law office in Birmingham. Rob Riley's office had come to be headquarters for the election recount challenges.

   On November 18, 2002, Matt and I spent the entire morning working together with Rob Riley in Rob's law office. As I recall, some time in the afternoon, Toby Roth (I believe) stuck his head in where we were all working, advising that a call had just been received

from someone in Governor Siegelman's campaign inquiring as to when Governor Siegelman could speak by phone with Governor Riley.

During the afternoon, Matt and I were in Rob Riley's law office with Governor Riley, Rob Riley, Steve Windom, Toby Roth, and others standing in the doorway – in fact, Matt and I pulled up chairs by Governor Riley and waited with him for the call. The call came sometime thereafter. While I could not hear Governor Siegelman's end of the call, I could hear Governor Riley's. The two men had a very amicable and friendly conversation. When Governor Riley hung up the phone, he stood up, Matt and I stood up, and Governor Riley put an arm around each of us, hugging us to him, and said: "The winning team". Rob Riley had a camera and snapped a photo. There were then hugs and handshakes all around and that was the end of it.

Later, after Governor Siegelman conceded publicly, we all rode with Governor Riley to his press conference. I recall we were all exhausted because there had been some days of around the clock working on the various pending lawsuits and the various legal briefs. I do not believe, nor do I recall, any conference call occurring with Ms. Simpson. In fact, during the entire recount controversy, Matt Lembke and I never did anything involving the issues, including conference calls, unless we did it together and with both consultation/concurrence by both of us on any matter, as we were the lead attorneys. Further, on November 18, 2002, Matt and I were never outside of each other's presence for any length of time for any phone conferences.

2. As to Ms. Simpson's allegations about concern over a Ku Klux Klan rally involving campaign signs of Governor Riley, I simply do not know of anyone who would give a good Southern "damn" or a "hoot-in-hell" about what the KKK thinks, either before, during, or after an election on any issue. Certainly this would be particularly true as to the placing of anyone's campaign signs at a Klan rally <u>after</u> an election.

3. As to Ms. Simpson's allegations concerning me approaching either Governor Siegelman or some of his "campaign people" about Governor Siegelman conceding the election and in return the KKK allegations, as well as that any Federal investigation/prosecution would end, that simply did not happen.

   I could not ethically (and did not) approach another attorney's client (in this instance Governor Siegelman), nor did I contact any of Governor Siegelman's "campaign people". Additionally, I would have no authority to prevent, stop, or end any Federal or State investigation/prosecution of anyone. That kind of authority derives only from State or Federal Attorney Generals, State District Attorneys, United States Attorneys, or the United States' Justice Department, none of whom was I in contact with concerning any investigation/prosecution of Governor Siegelman as alleged by Ms. Simpson.

4. Along with other co-counsel, I did help represent former HealthSouth CEO Richard Scrushy in the Middle District Federal Court of Alabama in 2006, wherein former Governor Don Siegelman was a co-defendant. While there is much that can be said about

that trial, I continue to believe that both Richard Scrushy and Don Siegelman were erroneously convicted and that their respective convictions should be reversed on appeal for many trial errors. However, I did not (as Ms. Simpson alleges) "go back and tell the Governor things" about Mr. Scrushy's case. Neither did I discuss Mr. Scrushy's case with Rob Riley. Again, these allegations by Ms. Simpson did not happen.

Additionally, there is just simply no conflict of interest on my part in having represented Mr. Scrushy, as Ms. Simpson's allegations on that issue are not true. In fact, the first time I ever heard of Ms. Simpson and/or her allegations was in May 2007 when I received media calls about her allegations.

5. Finally, among other general matters that I recall on November 18, 2002, co-counsel Matt Lembke, Rob Riley, and I were together in Rob's office on the mentioned date. As I recall, none of us were ever outside each other's presence on that day for any length of time, so if a conference call with Ms. Simpson occurred as she alleges, I am confident we would remember it, particularly, in light of the comments she alleges. Again, I neither recall any such call, nor do I believe any such call/conversation as alleged ever took place.

   Further, Bill Canary was not present with us on November 18, 2002, nor do I ever recall any conference call with him. In fact, to my knowledge and recall, I have never had a phone call with Mr. Canary.

   Reiterating, the allegations made by Ms. Simpson involving me are simply not true. While Ms. Simpson herself may not personally be in doubt, however, with no disrespect intended, I certainly believe her to be in error.

Terry Lucas Butts

SWORN TO and subscribed before me this 19th day of October, 2007.

Notary Public

My Commission Expires:

NANCY D. LOWE NOTARY PUBLIC MACON COUNTY, N. C. My Comm. Exp. 1/27/2011

Mr. FORBES. The Judiciary Committee staff questioned Simpson for hours about her allegation. Her credibility was shredded beyond repair. Her statements during the interview were misleading and unbelievable. In my view, the Committee should consider referring her to the Justice Department for further examination. That is why the majority did not want her here today.

Simpson swore out in affidavit in May 2007 about an alleged telephone conversation in November 2002, a conversation that she did not memorialize, nor tell anyone about until years later. In her affidavit, she alleged that Siegelman conceded the election because of a controversy surrounding a KKK rally. When interviewed, Simpson changed her story. She claimed for the first time that Siegelman had also conceded the election after receiving assurances that he would not be prosecuted. Continuing her fabrication, Simpson alleged for the first time in her interview two additional conversations regarding Siegelman's concession and prosecution.

Finally, in her effort to tie Karl Rove to the Siegelman prosecution, Simpson identified the name Karl in an e-mail discussing a FEMA contract as Karl Rove. We have since learned that the Karl referred to on the e-mail is Atlanta attorney Karl Dix, contrary to Simpson's assertion. That is why the majority did not want her here today.

Because the majority has not called Simpson today, I ask unanimous consent to submit the transcript of her September 14, 2007, interview with the Judiciary Committee staff.

Mr. SCOTT. Without objection, so ordered.

[The information referred to follows:]

1

RPTS McKENZIE

DCMN NORMAN

U.S. HOUSE OF REPRESENTATIVES,

COMMITTEE ON THE JUDICIARY,

WASHINGTON, D.C.

INTERVIEW OF: DANA JILL SIMPSON

Friday, September 14, 2007

Washington, D.C.

The interview in the above matter was held at Room 2138, Rayburn House Building, commencing at 12:37 p.m.

Appearances:

For THE JUDICIARY COMMITTEE:

SAM BRODERICK-SOKOL, MAJORITY COUNSEL

ROBERT REED, OVERSIGHT COUNSEL

CAROLINE LYNCH, MINORITY COUNSEL, CRIME SUBCOMMITTEE

DANIEL M. FLORES, MINORITY COUNSEL

MATT LANDOLI, LEGISLATIVE DIRECTOR AND COUNSEL, CONGRESSMAN CANNON'S OFFICE

For DANA JILL SIMPSON:

PRISCILLA BLACK DUNCAN, ESQ.

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JOSEPH E. SANDLER, ESQ.

SANDLER, REIFF & YOUNG, P.C.

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Washington, DC 20003

Mr. Broderick-Sokol. My name is Sam Sokol. I am counsel for the House of Representatives Judiciary Committee for the majority staff. I want to thank you very much, Ms. Simpson, for voluntarily coming up today to share what you know. I've just introduced myself. Why don't I ask the others here all just to identify themselves for the record as we get started.

Mr. Reed. Robert Reed, Oversight Counsel, Judiciary Committee.

Ms. Lynch. Caroline Lynch, Crime Subcommittee, counsel for the minority.

Ms. Duncan. Priscilla Black Duncan, counsel for Dana Jill Simpson.

Mr. Sandler. Joe Sandler, counsel for Ms. Simpson.

Ms. Simpson. I guess Jill Simpson.

Mr. Broderick-Sokol. You will have another chance to do that in a minute.

Mr. Landoli. Matt Landoli, Congressman Cannon's office.

Mr. Broderick-Sokol. Well, we'll try and proceed quickly, and I hope we won't take too long today. If you need a break at any time, just speak up and I'm sure we can accommodate that. The procedures or the few agreements that there are governing this voluntary interview are set forth

in exchange of -- well, a letter and an e-mail. And I think I'll mark those for the record and then go over them just briefly as we start.

[Simpson Exhibit Nos. 1 and 2
were marked for identification.]

Mr. Broderick-Sokol. Exhibit 1 is a letter from Chairman John Conyers to Priscilla Duncan, dated September 6, 2007, and Exhibit 2 is going to be an e-mail from Crystal Jezierski to an e-mail address H-E-L-Z-P-H-A-R, which is I believe is Ms. Duncan's e-mail, on September 14, 2007.

And the few agreements that there are, basically you will be asked questions today by just two people, myself and counsel for the minority, Ms. Lynch. You'll have an opportunity to review the transcript that's being made and correct any errors in it, and you'll receive a copy of that transcript when it's final. We all agree to hold the transcript confidential and it will only be released by a decision by Chairman Conyers after consulting with both the minority and with you and your counsel.

Your interview today will be under oath. We'll administer the oath in just one minute. So I'm sure you understand that means you'll be subject to the penalty of perjury. I also want to make sure that you and your counsel understand that an interview given to congressional investigators in an authorized investigation like this is subject to section 1001 of Title 18 of the United States Code, which makes it a crime to make any materially false,

fictitious or fraudulent statement or representation in such an authorized investigation.

Ms. Simpson. I understand that.

Mr. Broderick-Sokol. Okay. Now I'd like to ask the court reporter to administer the oath.

THEREUPON,

DANA JILL SIMPSON,

a witness, was called for examination, and after having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BRODERICK-SOKOL:

Q Just to start with a few personal questions, can you statement your full name for the record?

A Dana Jill Simpson.

Q And you normally go by Jill, is that correct?

A That is correct.

Q Okay. And what is your current place of employment?

A I work for myself. I'm an attorney in Rainsville, Alabama.

Q And how long have you had your own practice?

A Since May of '89.

Q Okay. Where did you attend college?

A The University of Alabama.

Q And law school?

A University of Alabama.

Q And when did you graduate?

A In '88.

Q Can you just run quickly through the jobs that you've had since law school?

A I've really only had one other job. I worked for Bill Veitch when I first got out of law school, but I pretty much went and set up my own practice shortly after I passed the bar. And that's it.

Q Okay. And were you working as an attorney for Mr. Veitch?

A Yes. Well, actually, yeah, I worked for a short time for him as an attorney, but I worked, you know, as a research person for him before I passed the bar.

Q Okay. Great. Now I understand from talking to you and just learning about the matter, that you've had some involvement with politics. Is it correct as it's been reported that you're a Republican?

A It is correct.

Q And you have done work on or in support of political campaigns from time to time?

A That is correct.

Q Can you just identify some of the political campaigns that you've worked on over the years?

A Okay. I guess I would start around 1979 or '80. My sister worked at George Bush Senior's bank in Houston at the

River Oaks Bank & Trust and so she recruited me to help. I mean -- and I don't know how much help, I mean, but I handed out stuff, put up signs and --

Q And I was raising my hand. That's why the witness stopped.

Just to jump in, just to really run through the campaigns. That would probably do it I think.

A Well, I helped with that. He actually came to my community at that time and spoke. So I helped with that.

Then I helped with Ronald Reagan's campaigns when I got in college. And I then got out of law school and there's a period of time where I didn't work for a small short period of time. Then I got back active because my boss Clyde Traylor was good friends -- I had worked when I was -- and I guess I should say that. When I was in law school -- you asked me after law school. But when I was in law school I worked for Lee Clyde Traylor. He is a Republican in our area. By the time I got out of law school, Lee Clyde had gotten appointed to be a judge at that time. He was real good friends with Perry Hooper. In fact, they claimed they were only one of the three Republican lawyers in the State at that time -- him and Bob French, who was another lawyer in my community, which I don't believe they were actually the only three Republican lawyers, but that's what they claimed. But they recruited me to help with Mr. Perry

Hooper's campaign. I did a little bit of work on that. Nothing on a formal basis. Then Perry Hooper actually came to our community and we threw him a big celebration afterwards.

And then I worked for the Rileys. And when I say "worked," it was just volunteer stuff that I did. And most of it -- I was not one that attended meetings and things of that nature. Rob was a friend and would ask me to do specific things.

Mr. Broderick-Sokol. Let me interrupt you for one second. We've had another person come into the room. Would you identify yourself just for the record

Mr. Flores. Daniel Flores with the House Judiciary Republicans.

The Witness. And Rob would ask me to do specific things, and I was up here in Washington doing some stuff sporadically, and additionally --

BY MR. BRODERICK-SOKOL:

Q Any other campaigns?

A I helped Roy Moore when he was running for the Supreme Court judge, and then I helped with Roy's campaign in the spring of 2006 for the gubernatorial campaign.

Q Okay. That's great.

A And then I helped some -- I had started back helping with Governor Riley's. I had called Toby Roth -- and I

think it was August -- to help with Governor Riley on some stuff, but in the office. And then from there -- and I sent that letter that I've told you about that, so I mean --

Q Well just to jump in. We'll have a chance to walk through all the events relevant to the Siegelman and Scrushy matters and why we're here today.

A Really, I guess it was a letter.

Mr. Sandler. Just answer the questions.

BY MR. BRODERICK-SOKOL:

Q It can be a long day in these interviews, and we're all going to try to keep it -- do our best to keep it as short as we can. So I'm going to --

A I want to say one other thing. And then I worked in George Bush's campaigns just as far as helping with my general way I help, which is putting up signs and things of that nature.

Q Yes. And did you work for both of his Presidential campaigns?

A I did. But I was more active in the first than the second because, I explained to you, that I had lost the baby in the second, so that year --

Q Sure. As we talk -- and I will just say that we have spoken before. I interviewed you at some length, as I think everyone here is familiar. But if you refer to things that you may have said to me, it may make for a confusing

record because not everyone here knows. I mean -- I may not know what you're referring to. So it will probably be more constructive, one, if you stick, if you can, to the information that I'm asking you directly about in the questions, and if you are thinking of things that you know we have talked about, to just recite them.

A Okay. That will be fine.

Q I think the record will be shorter and more understandable for future readers that way.

Did you ever work on any campaign of Don Siegelman?

A Never.

Q Okay. I do want to turn now to the 2002 Riley Siegelman campaign and the events that you ultimately described in the affidavit that you signed on May 21. You did some work for the Riley campaign, as you said before. Can you describe some of the work that you did for that campaign?

A I would talk to Rob directly about strategy.

Q And that's Rob Riley?

A That is correct.

Q Okay. What else?

A I would help if he asked me to help on specific things. I was not a phone worker or anything of that nature. I did help get signs out in the community. He would ask me -- he would hear that Don was coming to the

area of where I was located at.

Q In what area was that?

A DeKalb and Jackson County. I lived -- at that point I had a house in both DeKalb and Jackson County, on the lake.

Ms. Lynch. I'm sorry. Could you spell DeKalb for me?

A D-E capital K-A-L-B.

Ms. Lynch. Thank you very much.

The Witness. He would ask me to try to follow Don Siegelman to try to obtain some pictures.

Q And did you do that? Did you follow Don Siegelman for some time when he visited your area?

A I would traditionally -- I guess you could say I followed him to specific events.

Q And did you ever formally volunteer for the Riley campaign? Did you fill out any volunteer registration forms or send them any -- you know, sign up on a list?

A No.

Q Most of your contact was with Rob Riley directly?

A That is correct.

Q And that's the son of Bob Riley, who was the candidate for Governor?

A That is correct.

Q How did you know Rob Riley?

A I knew him from college at the University of

Alabama.

Q Now I would like to get to the telephone conversation that you described in your affidavit. I understand that at some point you were asked to find out why Riley campaign signs were being taken down or disappearing in in your area. Who asked you to do that?

A Rob.

Q Did he ask you that over the phone, or was that in person?

A I believe he asked me over the phone.

Q And what did you do to figure that out?

A Well, he had told me that he thought campaign signs was missing, was coming up missing. And he was suspicious that Parker Edmiston might be involved.

Q And who was Parker Edmiston?

A He was an attorney in Jackson County.

Q Okay. And did you know Mr. Edmiston?

A Yes.

Q Okay. And at some point did you get the idea that these signs were to be put up at a Ku Klux Klan rally?

A I got the idea because Rob told me that.

Q And did you go to that rally?

A I did.

Q And what did you see?

A When I got there, I saw a bunch of folks there,

unusual bunch of folks, actually, but if you've seen the video -- but I just went to watch and see what was happening.

Q Did you see Mr. Edmiston?

A I did. He appeared.

Q And what did he do?

A I think the first time that he appeared -- because he made several trips, and the video doesn't show all of it. But the first time that he appeared, I saw him with -- I don't know, five or six, seven, eight signs, something like that. I'm not exactly sure how many signs he had.

Q Riley signs?

A Riley signs, which was surprising.

Q He was a Democrat?

A He was a Democrat.

Q Okay. And did you see him put some of those up?

A I did. I watched him go around the gazebo.

Q Okay. Now at some point, as you describe in your affidavit, you end up on a telephone call, which at least in part discussed those signs?

A That is correct.

Q And why don't you tell me how you came to be on that call?

A Okay. Here's the deal. I went to the rally on the 16th and I took the pictures. I was supposed to call Rob

first thing on Monday morning about those pictures because they had somehow gotten information Parker's going to do it. They wanted to know first thing on Monday morning about those pictures.

Q Just to interrupt, I think I didn't ask you this before. But the rally was over the weekend?

A It was on a Saturday, yes. It was on the 16th --

Q Go ahead. Sorry.

A -- of November.

Anyway, I decided over the weekend that I would confront Parker about those pictures before I called Rob. And I had a court case that morning anyway, over in Jackson County I believe, because I think I had something over there. And so I went over to the courthouse, and I hunted Parker. And I believe it was a court case. I may have been getting a judge to sign an order, I'm not certain, but I had something to do in Jackson County. I did my business and I remember going in the clerk's office and I asked them if they had seen Parker, and they pretty much told me that Parker had already been in there showing them the pictures. And I thought, oh, no. So --

Q Okay. And did you talk to Parker?

A I did. I finally located Parker in the courthouse. He had a group of attorneys that were surrounding them -- him. He was telling a story about the pictures, and he was

pretty much holding court in his own little -- you know, about -- and was providing a most entertaining story.

Q And the pictures showed a Riley sign up at a Klan rally?

A And Parker was contending that Bob Riley had a Klan rally.

Q Okay. And how did you get from there to the phone call with Rob Riley and others?

A Well, at that point I asked Parker a question. I said, What are you doing with those pictures? Because I -- and he, of course, didn't know. But I wanted to know if he had just showed them there. But he had a group of folks. I said, What are you going to do with those pictures? And he said that he was going -- that they were already on the Web site, that he had put them up -- he didn't say he put them up on the Web site. He said that they had been put up on a Web site. I want to make sure I'm specific on that. But that they were on a Web site. But I don't think he said he did it. I think he just said they had put them up on a Web site. And I realized at that point that I probably just needed to go ahead and call Rob because he had already got them up on a Web site.

So I asked Parker if I could have a couple of -- I told him I was going back to DeKalb County. I had a couple of people I would like to show. Could I have a couple of his

pictures, too? So he gave me a couple of his pictures also.

Q Okay. You said, talking about Parker, that he didn't know. Did you mean that he didn't know that you had seen him put up the signs?

A He had no idea that I had seen him put up the signs, and I did not enlighten him. I just listened to his story.

Q I understand. So you called --

A He thought I was going to spread the news when I took the pictures.

Q Right. So you called Rob?

A I go out to my car and called Rob.

Q From your cell phone?

A From my cell phone.

Q And did you reach him directly?

A I did. And I think they were -- because he told me, we've been waiting for your call.

Q And who was "we"?

A He had people in his office, some of which are unidentifiable.

Q To you?

A Right. And so he just said in plural, we have been waiting. And I don't know who he was talking about, the "we" at that time.

Q When you spoke to Rob, were there other people on the line?

A Yes. He got Bill Canary on the line and Terry Butts on the line. And I believe that the Governor was there also, but he didn't say anything. And that's what I've always told in my story. But I can't say, because there was some mention that somebody was in a parking lot and that they would -- and I don't know where that parking lot -- I don't know if it was Rob's parking lot or where it was. But after we started talking, they all got a real hoot and a howl about the Democrat. And there was more people laughing and cutting up in the background than was on the line, so to speak.

Q Okay. Had you been on a call with Bill Canary before?

A Rob had called me about those pictures and about that Klan rally. And he said that that was Bill Canary that was with him, asking me to go to take the pictures of the Klan rally.

Q He called, and someone else was on the line that Rob identified as Bill Canary?

A Right.

Q And this was before you went to the -- this was when they were asking you to go?

A Right.

Q Okay. Had you been on a call with Terry Butts before?

A No.

Q So did he introduce himself or did Rob introduce him, if you remember?

A I just remember that they at one point put me on a speaker phone, and I could hear a roomful of people and they said, this is Terry Butts or Terry identified him. I can't say who identified him, whether he did it or they did it, but somebody identified that that speaker was Terry Butts.

Q Okay. And part of this call, as you have described, was your describing the Klan rally, your encounter with Parker Edmiston. You also end up, as you describe in your affidavit, talking about Governor Siegelman and whether or not he would concede?

A That is correct.

Q Okay. Why don't you describe what was said about whether or not Don Siegelman would concede the Governor's race?

A Terry Butts said in the conversation that he believed that he could confront Don Siegelman regarding the signs and get him to concede the election. He believed that Don would concede over that by the 10:00 news so as to avoid any embarrassment. And Terry also said -- and it's not in my affidavit, because you can't put every single solitary word. Terry said, you know, I knew Don back when I was a Democrat. Terry was the one who was a Democrat and then he

flipped to being a Republican. So he said that he -- he claimed that he'd be able to assure Don that this would all be over if he would just concede. Pretty much. And I mean, that's the general statements. I mean, he made a couple of statements, but that's the general premise of it. I can't say that that is verbatim, but that's the gist of the conversation.

Q Let me stop you for a moment. You are looking at something now that I have not identified as an exhibit.

A That's my affidavit. I just wanted it in front of me in case y'all referenced it or whatever.

Q Sure. We'll be marking it as an affidavit. If you are more comfortable with it there, that's your choice. My preference would be --

Ms. Lynch. Could we mark it now if she's going to be looking at it?

Ms. Simpson. If they want to look, I figured they would be referencing it, paragraph --

Q Jill, let's go ahead and mark that as an exhibit. I'm going to ask some questions, and I want you to search your recollections and think of everything you recall. I understand that drafting the affidavit was a particular act, and we'll discuss that and things you included, things you may not have included. But we're also interested in the full story of what you recall, sitting here right now. So

this is going to be Exhibit 3.

[Simpson Exhibit No. 3
was marked for identification.]

BY MR. BRODERICK-SOKOL:

Q Other than the markings at the bottom right, which are numberings that we applied to all the documents you have produced to us, and they start at Simpson 1 and count up sequentially through the documents we've received, this is a copy of the affidavit that you ultimately actually are describing some of the events that we are discussing?

A That's correct.

Ms. Lynch. I hate to interrupt. But I would like to go on record as saying if there's any way to obtain a copy of this affidavit that has the legible signature and date. I think if you take a look at it, you will notice that the copies that we have, we can faintly make out a signature, but cannot make out a date or the name of a notary and all. So I guess the question would be either to Ms. Simpson or counsel.

Mr. Broderick-Sokol. Sure. One thing I can do, when you produced -- could we go off the record?

[Discussion off record.]

Mr. Broderick-Sokol. We briefly discussed the documents that Ms. Simpson had produced off the record, and I noted that the version she sent up electronically,

including the affidavit that we have marked as an exhibit, have spots that are faint or more difficult to read. And we have better to read copies up here in the committee already of all the documents, I believe all of them.

BY MR. BRODERICK-SOKOL:

Q So to proceed, we were discussing the call, and I think it -- can you read back the last answer?

[The reporter read back the question.]

Ms. Simpson. I think my last sentence was that Don -- Terry claimed that he would be able to assure Don that it would all be over if he conceded. And I believe that was what my last sentence was, prior to us going on this venture?

BY MR. BRODERICK-SOKOL:

Q Okay. And did someone express a concern that the picture should be made public anyhow to prevent having an impact on Mr. Siegelman's political future?

A They did. And that was Rob Riley.

Q Okay. And what did he say about that?

A He said that he felt they should go to the press with the pictures, but there was some disagreement about that.

Q Okay. And what was that disagreement?

A Bill Canary said that in order, basically, to get this over with, that not to worry, that Don -- that his

girls would get him. Let's just go ahead and get this election contest over with, I guess would be the best way, you know. Because Rob kept saying, I want Don Siegelman not to run. They were talking over each other in that particular -- I don't want to face -- we don't want to face Don in running again in the future.

And Bill said -- and that part didn't exactly make it into my affidavit. But Bill said, "Rob, don't worry. My girls are getting him, will take care of him." But he said, "Let's get this election contest behind us."

Q I understand.

A And Rob was going, well, I think we need to go to the press. So there was some kind of conversation about that.

Q As you've said. And by him, Bill Canary meant Don Siegelman; that's what you understood?

A Yes. He said not to worry about Don Siegelman; you know what I mean?

Q Yes.

A That his girls would take care of him.

Q And did you know who Bill Canary's girls were or what he meant by that?

A I was not sure. I knew at some point Rob had told me that his wife -- but on that particular day, I asked. And that's not in here because -- but the next sentence is

of what pretty much Bill said, because I was like, Who's your girls? And then --

Q I'm sorry. So you asked the question, you asked Bill Canary who his girls were?

A I just said, Who's his girls? For the general -- because there was a room, and there was people on the line. And I'm not sure how they were all added, but I know that there was a speaker phone and we added some people into the conversation. And where their locations were at, I'm not certain.

Q And so what was the answer to that question?

A He told me somebody -- and I believe it was Bill Canary -- identified, as I recall, saying Leura's my wife, Jill. She works for the middle district of -- and then Alice Martin works for the northern district. And I think there was some mention also of being a USA attorney. I know there was some mention of being a USA attorney, but I think there was some mention that Bill had helped Leura -- I mean Alice-- run for office before in that --

Q Before Alice Martin was the U.S. attorney, she ran for political office?

A Yes. Because I'm like, well, what's y'all's connection to Alice Martin, or something like that, because they named her. But then I asked.

Q Okay. And what happened next?

A Rob was still very concerned. Rob really believed that they should tell the press. And what you need to understand, the press -- from what I understood that day, from what they told me, is they were already calling about that on the Web site. There's a whole lot of people in Alabama that saw that, the photos on the Web site. It was making --

Q The photos of the Klan rally?

A Uh-huh. So they were already getting calls, and Rob thought they would to go ahead and address it. Canary -- and this is general, what I'm saying. But Canary didn't -- my interpretation was he did not really think that they should go to the press; that they just needed to use it and let Terry go see him and get Don to concede.

Q Okay. And did Rob ask something about if they were sure that Bill Canary's girls could take care of Don Siegelman?

A Yes, they did.

Q Can you describe that part of the conversation?

A Well, what he said -- Bill Canary told him not to worry. He had already got it taken care of with Karl. And that Karl had spoken to the Justice Department and the Justice Department was already pursuing Don Siegelman.

Q And did you know who he meant by Karl?

A I did.

Q Who did you think he meant?

A Karl Rove.

Q Did he ever say Karl Rove?

A No. But I knew from conversations that I had had with Rob that Bill Canary was very connected to Karl Rove. Additionally, there was some talk -- and that's not in my affidavit -- about Karl had -- about Washington; that Karl had it taken care of in Washington. I mean, as I said, I couldn't put everything down. I put the best I could, but I didn't write every single word that occurred in that. So I understood that to be -- and the only Karl I knew involved in Rob's conversation was Karl Rove. So that's how I understood it.

Q And what was the additional talk that you say isn't reflected here about Washington?

A Well, the additional part of that was, as I understood, Karl had been over to the Justice Department.

Q There is some reference -- he had physically gone there?

A That's what I understood.

Q How did you know that?

A I think they mentioned it. They said he had spoke to the Justice Department. And somebody in the room said, When did he? Or, What happened exactly? And he said, Oh, he went over there and talked to him in Washington. So I

mean, there was no question in my mind.

Q Did they say who he talked to?

A No. And I have no idea.

Q And as you were hearing the conversation and understanding it at the time, leaving aside the precise words that you used in your affidavit, but did you understand them to mean that Karl Rove was encouraging the prosecution?

A What I understood, or what I believed Mr. Canary to be saying, was that he had had this ongoing conversation with Karl Rove about Don Siegelman, and that Don Siegelman was a thorn to them and basically he was going to -- he had been talking with Rove. Rove had been talking with the Justice Department, and they were pursuing Don Siegelman as a result of Rove talking to the Justice Department at the request of Bill Canary.

Q Did anyone mention, or did you have an understanding as to when Karl Rove had spoken to the Justice Department?

A It had already happened. It was not something that Bill Canary was promising. I understood that Bill Canary -- because Rob kept saying, Well, I want to go to the press. And Bill said, Look, I know pretty much all about this. The Justice Department's already pursuing Karl. And that was the general gist of it. Not Karl, Don. And that Rove was involved, and that they had been working on it for some

time, and I got the impression it had been going on for some time.

Q Okay. How did that call -- well, was there anything further said about Don Siegelman, about -- strike that.

Was there anything further said about the Justice Department or possible criminal prosecution of Don Siegelman on that call that you can remember?

A There were people chattering in the background, but I can't say what they were saying. They had discussions going on over there, too. So with that, I can't say specifics on what they said.

Q Okay. And how did that call end?

A They were to call me back. I was going to have to go to Fort Payne to see a circuit judge, and they were going to send somebody, and they were going to have to let me know how they were sending somebody to get the pictures. And they didn't have that worked out in their head at that time. And then I -- so --

Ms. Lynch. Can we stop?

[Discussion off record.]

BY MR. BRODERICK-SOKOL:

Q Did you ultimately provide the pictures to someone from the Riley campaign?

A I did.

Q And did Don Siegelman ultimately concede?

A He did.

Q Okay. And did he concede that very day?

A He conceded that very day.

Q I'm going to mark a couple more documents now. I think this is going to be Simpson 4.

[Simpson Exhibit No. 4
was marked for identification.]

Mr. Broderick-Sokol. This is a 2-page document of telephone records that Ms. Simpson has provided to the committee. And the first page is marked Simpson 490, and the second page is marked Simpson 489.

BY MR. BRODERICK-SOKOL:

Q On the top of the first page there's a number -- well, what is this first page?

A This first page is my Farmers wireless cellular bill.

Q Is your cell phone number somewhere on this page?

A Yes. It's the 899-3600. I have multiple cell phones at any given time, depending on -- because I represent different folks, and some of them even provide me a phone.

But I also have 3601 and 3606. And I sometimes am charging one. I'm never without a cell phone. So --

Q Okay. And on the bottom of this page, there's -- well, is the call that you describe with Rob Riley and Bill

Canary and Terry Butts listed on this page?

A Yes. It's the 11:18.

Q So there's a call at the very bottom dated November 18 at 10:52 a.m.?

A That is correct.

Q That call lasted for 11 minutes?

A Right.

Q Okay.

A And then you've got another page attached to that. Are you asking me about that page too?

Q I'm not asking you about the next page right now.

A Okay.

Q I'm going to -- hold onto that one because we're going to go back to it.

A That's what I'm trying to figure out, what I need to do with it.

Q The next document is a -- this is a stack of documents that you also provided to the committee. The top one is Simpson 558. They are not in Bates order.

[Simpson Exhibit No. 5
was marked for identification.]

BY MR. BRODERICK-SOKOL:

Q I will describe that these are a selection of documents that I have pulled from what you provided us that are letters between you and Rob Riley and various clients or

other individuals. That is how I understood them.

Is that an accurate description of what these documents are?

A It is. And this is not all-inclusive. I asked my secretary to pull out of a couple of drawers, documents -- because I mean we've got drawers full of them. But I just asked her to pull out a couple, since he had claimed he didn't know me basically in a newspaper article.

Q So the record is clear, I did not pull -- I did not pull all of the documents that you had sent as examples. And your testimony just now was that you have even more that you did not even send in to the committee because you were just picking samples?

A And this is -- basically it looks like what -- I told my secretary when she pulled from the drawers, I don't even think she pulled from -- I think if you could see the blacked-in stuff, you would see it's just a couple letters of the alphabet. I just told her to pick any drawers, closed drawers. We put our files in the drawers at the office. So she picked those, and I told her to try to get a couple from 1998, '99, 2000, 2001, 2002 and so forth, because he had done that article that suggests he didn't really see me any during that time.

Q Okay. And the earliest one we had in this group I have selected is June 1998, and they run through 2004. Did

you have business dealings of this kind with him before '98?

A Sometime after I did my TWA 800 case, he got started trying to get me to do cases with him, and so -- because he had heard I had some big cases that I had settled, and he was in a large firm in Birmingham, and I had been referring them out. I can't say what year I started with him. I just had my secretary pull out of two drawers, but it was sometime after the TWA 800 disaster, because I did a case involving that.

Q Okay.

A And he heard about that. And that's kind of how he started pursuing me to be a referring attorney.

Q Okay. I just want to look at a few pages of Exhibit 5. The first page, I guess there's a telephone number for Rob Riley's office in the letterhead, 205-870-9866. Do you see that?

A That is correct.

Q Do you want to go back to Exhibit 4?

A Yes.

Q Just so the record's clear, what is the phone number for the November 18 call?

A It is 205-870-9866.

Q Okay. And does that number -- why don't you turn to the second page of Exhibit 4, the phone records.

A Yes.

Q Well, what is this page?

A This page -- why did I offer it? Is that what you mean?

Q Well I'm asking what it is. It looks like a telephone billing record.

A It's a phone record and it's one of -- I have four or five, I think approximately, because I've got computer lines and all that, telephones. I'm not really sure how many telephone lines, but this is one of the telephone lines in our office that I have.

Q Okay. And I think it will just be simplest if I just note for the record that that same number appears in several places.

A That is correct.

Q On this page.

A But I believe some of them other Birmingham numbers are Rob's numbers.

Q Which ones do you think might be that?

A I think the 5000 number is.

Q 205-879-5000?

A Yes.

Q And that's the bottom number on the page?

A I think maybe that 205-824-3117. I'm not certain on that, but I believe that it may be a campaign headquarters number, but I'm not sure. I had Rob's home phone numbers, I

had his parents' phone numbers. And I don't do business in Birmingham. Most of the Birmingham numbers in some way in my phone records involved the Rileys. I have one girlfriend from college who lived in Birmingham and so I had her cell numbers. But other than that, I believe most of the Birmingham numbers are his or are headquarters numbers because, you know, they run multiple lines in volunteer centers and things of that nature. But I can't track all those numbers.

Q That's extremely helpful. And if you will just flip -- I'm sorry -- to the other, Exhibit 5 now. Yes, that larger stack. And just so we can see, if you go about seven pages in, there's a document, Simpson 532. It looks to be a fax cover sheet. I think that may be it in front of you.

A Yes.

Q And what is the office telephone number for Rob Riley's office on that one?

A It's the 5000 number.

Q Okay.

A That matches the phone.

Q And I'd like to ask you about one more document that's in the stack. It's Simpson 550. It's about two-thirds of the way through. It looks to be a complicated document that looks to be a printout of an e-mail that was faxed to someone else and also has some handwritten notes on

it.

A That is correct.

Q Okay. And the general substance of this appears to be an effort to get a Senator to send a letter. I'll read the first two sentences of the e-mail. "I've been talking with Robby from Hutchinson's office. He has offered to try to get the Senator to send this letter." And the letter has to do with getting payment on a FEMA matter.

A That is correct.

Q Can you read the handwritten note that's at the top?

A "I e-mailed this to" -- and that's the client's name -- "then Karl and Stewart today."

Q Hold on. Oh, I e-mailed -- sorry. You are reading it. Sorry.

A I say the blank is the client's name that I can't disclose. But it says, I e-mailed this to the client's name, Karl and Stewart today.

Q And then it says Rob?

A Yes, that's the note he sent me.

Q You didn't read the beginning which is "To Jill."

A Yes.

Q Is this Rob Riley's handwriting?

A Yes, it is.

Q Okay. And the Karl that is referenced here -- well, let me ask about Stewart. Who is the Stewart that's

referenced here?

A Stewart is a lobbyist that works for the Federalist Group.

Q Here in Washington, D.C.?

A Yes. And they've now been bought out by Ogilvy.

Q This matter was an effort to collect on a FEMA contract?

A That is correct.

Q And the Karl that is listed here, do you know who that is?

A I believe that is Karl Rove.

Q And why do you think that's Karl Rove?

A Rob -- what Rob would do for us occasionally, he would ask me to do little odds and ends for him, such as follow Don Siegelman and stuff. And then he for me occasionally would -- if I needed somebody to write a letter to speed up a client getting a check or whatever, he would see if he could find somebody that would help me with that. And it was not uncommon for him to talk to Karl Rove and Stewart Hall about that because he would make reference to it.

Q You had heard Karl Rove's name come up before in conjunction with matters like this?

A Yes. And basically what we would do, we would help to write the letter that we wanted or he would help to write

it. He would send it to me for me to approve, then he would send it to Stewart and our -- or whoever. And they would -- and Karl -- and then they would attempt to get it approved. You know, I mean get somebody to do it.

Q Great. Could we go off the record briefly?

[Discussion off the record.]

RPTS KESTERSON

DCMN ROSEN

[1:30 p.m.]

Q What I'd like to do now is we've -- Ms. Simpson, you sent a DVD up to the committee along with materials and we have that playing on a laptop computer here. And I'd just like you to look at it briefly to understand -- or to tell me if this is video of the Klan rally that you attended on that -- Klan rally that you observed on that Saturday the 16th.

A It is. And I do want to state for the record that is the only one I've ever attended.

Q I apologized as soon as it came out of my mouth. And we're not going to watch the full -- more than an hour, I think, of video that we have here. But you've reviewed this closely and you described that it shows Parker Edmiston putting up the signs?

A That is correct.

Q Okay. We'll just play it for a minute to see.

A I'll probably help you because he comes from this direction over here.

Q Are you familiar enough to know if it is soon that he appears?

A Yes, it is pretty soon. It is about 12:58 he shows

up on the site. I had to go a few minutes early because -- I'm not certain. I think you may see him in a second or two or a minute or two. He has already got one sign up. There was already one sign up, but -- and I don't know how that had gotten there.

Q As we're watching, it shows folks in confederate gear -- there is not actually any Klan regalia. But does that show up later?

A That shows up later. Basically this is when they first start to set up. Now, here comes Parker. And you don't yet see him. When I first saw this videotape -- because I didn't get this videotape until a couple of weeks ago. And when -- I thought it is not going to show his face, but it shows you him as pretty as can be.

Q Is that him right there?

A That is Parker.

Q I'll describe the white gentleman with grayish hair and a sweatshirt of some kind with a logo over the chest and a red T-shirt or something underneath?

A That is correct.

Q Putting up a couple of rally signs?

A I saw that very scene -- I took pictures of it and I did not do the videotape. The cops had actually done the videotape. But that's how it starts, what he did that day.

Q Thanks very much. And we're going to mark that DVD

as Simpson 7 -- 6.

A And that is not all inclusive of what he did. There is actually more signs.

Q I understand. Well, that was very helpful. I'm very sorry. Simpson 6 is the DVD. Okay. We're getting that right now to mark.

[Simpson Exhibit No. 6
was marked for identification.]

BY MR. BRODERICK-SOKOL:

Q How did you come to obtain that video?

A I got a call from an individual who was connected with the Scottsboro Police Department. I had a spouse that was connected to the Scottsboro Police Department and said that the Scottsboro Police Department -- that they had heard I had been trying everywhere to find a videotape. I had been to the Jackson County Sheriff's Department several times. I gave my pictures away to the Rileys, so I didn't have proof of that, even when I made my affidavit. But I knew that it had been videotaped because I had knowledge of that from being there that day and also -- but I did not know who the videotapers were. When I talked to the reporter, he said a videotaper was the sheriff's department. But I've tried to obtain pictures from the sheriff's department and a videotape and they contended they could not find them.

Approximately 2-1/2 weeks ago, after having been beat black and blue in the Alabama press, a call in my office comes in at 7:00 approximately at night and it is a woman who says do you know that the Scottsboro city police has five hours of videotape that shows exactly what you are saying has occurred. And I said no, but who has got it, you know. And so she proceeded to tell me and I said why are you calling me about it. And she said, I want you to have a copy of it. So I said, okay, how can I get it. And she said I will bring it to you.

Q And is that what happened?

A That what happened.

Q And who was that?

A She asked me and I talked to the Alabama bar when she handed it to me. People from the sheriff's department -- I mean, the Scottsboro Police Department gave it to her, but she asked me -- she said that -- she said I'm your client now, here is the pictures and that's what she did. That's the video and that is what she did.

Ms. Lynch. That is not sufficient to establish attorney/client relationship.

BY MR. BRODERICK-SOKOL:

Q Let's try something different. Would you prefer not to name the person?

A I'd prefer not to name --

Q It is a voluntary interview and I don't have a problem or strong need to know myself. That's fine. But it was --

A It was my understanding that she had obtained it through the Scottsboro City Police Department.

Q Okay. That's fine.

A But she brought it and she didn't want to be involved. So --

Q That's fine. Okay. After Governor Siegelman conceded the 2002 election, what was the next time you spoke to Rob Riley about that governor's race?

A Some times late November or December. I believe it was December, but I'm not sure. I mean, I -- after he conceded -- I may have spoke to him -- I don't know exactly, November or December.

Q Okay. And did you have a conversation with him about Mr. Siegelman's decision to concede?

A Yes, I did.

Q Can you describe that conversation?

A I understood from what Rob told me that Terry Butts talked to Mr. Siegelman and some of his campaign people is what I understood. And in that conversation basically, Mr. Siegelman had been offered to go ahead and concede, that the pictures would not come out and that they would not further prosecute him with the justice department.

Q So your statement is that Rob Riley told you that Terry Butts had essentially given Don Siegelman two messages, this business about the Klan rally and the democrat putting up the signs would go away and the threat of prosecution from the justice department would go away?

A Yes.

Q If what, if he conceded?

A If he conceded. And I actually kind of put that in my affidavit too. I don't know that you want me to refer to it.

Mr. Sandler. Just answer the questions now.

The Witness. Because Terry -- part of when we had been talking about that -- but anyway -- had -- that day that we talked on the phone had involved Terry said, you know, basically everything is going to be over, he is going to give Don assurances everything is going to be over.

Q Back in November when you were on the phone, you heard Terry say the assurances he was going to give Don were everything and you understood that --

A And I asked --

Q What did you ask?

A I asked Rob about if it was going to all be over for Siegelman when we had the call in December, just talking to him, I said what have they done on the other case, the other cases.

Q And what did Rob say?

A He said in that -- at that time that everything was going to be over and they did, I reckon for 14 months afterwards it was over from what I understand. But that's not -- I can't say that from personal knowledge, but --

Q Okay. I understand what you are saying, that as -- look, you don't see Siegelman was prosecuted for some substantial period of time.

A Right.

Q Where -- where were you if you remember when you had this conversation with Rob Riley?

A I had phone calls with him and you've asked me this before. And I saw him during that time because he saw clients. He would come to my office regularly to see clients and stuff. So the thing is this, I just don't recall, you know, exact location of where I was. I'm not sure -- I think we had actually several communications about, you know, Don Siegelman and Terry Butts going and talking to him. But I can't say a specific date or time or place.

Q Could they have been on the telephone or do you believe these conversations were in person?

A I really believe they were on the telephone, but I'm sure that when he came to the office, we probably laughed about it also. So --

Q Okay. And you say as I understand what you're saying, the memory you're describing may be what you learned from Rob Riley over the course of more than one conversation?

A Yeah, I've thought about it quite a bit. We -- I mean, this is something we -- right around that time, we talked about several --

Q And looking at that sort of the -- I guess the sum of your recollections from those conversations, is there anything else you remember that you haven't described here about this kind of confrontation between the Riley campaign and Siegelman and the issue of the -- the possibility that he might be prosecuted if he didn't stay out of politics?

A I just know that Rob pretty well indicated to me that Terry had talked to him and made these assurances. I didn't necessarily believe they were going to live by them because I -- if Don got back in the race, I think, you know -- I said, well, what if Don doesn't follow that and Rob said I think -- as I recall -- he basically said well, if he doesn't, you know, they'll prosecute him. So --

Q And did Rob ever tell you if he was present with Terry Butts when Mr. Butts spoke to Siegelman or folks from Siegelman's campaign?

A From what I recall, I understand that Terry Butts did this all by himself. And I don't know how he did it. I

just recall that Terry did whatever he did by himself.

Q When Rob was telling you those thing, he would had to have been relying on what Terry Butts or somebody else would have told him?

A Right.

Q I'd like to move forward in time now. Did you have another conversation with Rob Riley about politics and Don Siegelman in the early part of 2005?

A I did.

Q Okay. And how did you come to be talking to Rob Riley that day?

A I went -- I adopted a baby -- you know, I lost a baby December 25, 2003 and then 2004, I didn't work a lot during that year because I was so depressed over losing the baby and I told you about that in 2005, I adopted a baby on January 9 and I was so excited because I had missed being out so much that I shopped a lot during that time because I wanted to buy baby stuff.

Q A baby will do that to you.

A And I ended up going to Homewood, which is probably the nicest place you can shop for baby stuff in our state which is right -- the street runs right into Oxmoor Drive or whatever that street is that Rob is on and he was like a block or so from where I had been shopping for the baby. And I wanted to take by and show a picture of the baby. Rob

had not been in the office during the month of January, and I wanted to stop by and show him a picture of the baby. And so I left my shopping after I had bought a bunch of stuff and went by to show him a picture. I had a picture of the baby in my hands, you know, where you hold it. And so anyway, I stopped by his office and we started gossiping.

Q And did you discuss the 2006 gubernatorial election that was coming?

A Yeah. I mean, you know, it always rolled around to politics any time we got together and who knew what. He asked about some politicians up in my area. I think I mentioned first, you know, the -- you know, what is going to happen in the 2006 election. There had been some talk at one time originally that Rob might run after his daddy's first term, but Bob liked the job so much, he wanted to stay in it according to Rob. So we were talking about that. Then we got to talking about who was in the field, who was going to be running. We talked about Lucy Baxley and her weaknesses and how we could hit her, you know, with what we could run with on that.

Q Is she a Democrat or a Republican?

A She is a Democrat.

Ms. Lynch. Could you say her last name again?

The Witness. Lucy Baxley.

BY MR. BRODERICK-SOKOL:

Q And did you talk about Don Siegelman?

A And we talked about Don Siegelman.

Q And what did Rob Riley say about Mr. Siegelman?

A That Don Siegelman was the biggest threat that we had. Don Siegelman -- Rob, he had several names for him, but one of them was the golden child. Don Siegelman is kind of like a golden child for the Democratic party in our state. So, anyway -- and is an incredible fund-raiser. So he was talking about who we thought he might raise funds with. And then he said that he -- I said, well, you know, he is not supposed to run again, but, you know, Alice Martin, I had like, you know -- we discussed Alice Martin messing up the case in Birmingham.

Q Okay. Let me stop you there. Before talking about Siegelman, you discussed Alice Martin messing up the case, but Siegelman running -- you discussed Alice Martin's prosecution of Mr. Siegelman up in the Northern District of Alabama?

A Uh-huh. And we start talk -- we really -- we talked about Lucy Baxley and then started talking about Don Siegelman. And, of course, the first part of our conversation was that Alice Martin had miserably messed up convicting Don.

Q Yep.

A And also we talked a little about the fact that Don

had -- there had been a poll done somewhere in 2003. And based on communications I had with Rob -- but I didn't have many in 2004. Don had decided to run before he was -- Rob and them had when he was going to run, even though he had assured Terry Butts from what I understood that he was not going to run. And -- so Alice Martin on the last day or whatever that she could convict him, she pretty much -- she filed paperwork to prosecute him.

Q And this is all in the discussion you had with Rob Riley, you learned all the things you're telling me now from Rob Riley?

A I had not been in the loop that much in 2004. So we were discussing how Alice had gotten this case, because I was, like, how did -- you know, how did, you know, she -- what caused her to bring that case? I thought she wasn't going to bring it, you know. And we were having a discussion about that. And he said they had gotten some wind of the fact that Don was going to run again. But she messed up the case. And then she got Judge Clemon who did not believe in criminal intent. We had a discussion about Judge Clemon not believing in criminal intent and that the case got thrown out sometime in the fall of that year. And Rob was kind of telling me the gossip about that deal.

Q These are things that had happened the year prior when you had been somewhat out of the loop as you had said,

you weren't working or doing other things for personal reasons?

A And so, anyway, he was telling me all of the things that Alice had done as far as having messed up the deal. And then I -- and that since she had messed it up, he was definitely running, you know what -- I mean -- and then he proceeds to tell me that Bill Canary and Bob Riley had had a conversation with Karl Rove again and that they had this time gone over and seen whoever was the head of the department of -- he called it PIS, which I don't think that is the correct acronym, but that's what he called it. And I had to say what is that and he said that is the Public Integrity Section.

And I read in the paper since they call it PIN, but he called it PIS. So anyway, I said at the time that, you know, what happened -- you know what I'm saying? So -- but they had a conversation with Karl and then Karl, it is my understanding, then went over to the Public Integrity Section and talked to the head of it.

Q About what?

A About Don Siegelman and the mess that Alice Martin had made and it was my understanding in that conversation after that conversation that there was a decision made that they would bring a new case against Don Siegelman and they would bring it in the Middle District, which is not my

district where -- you know, you and I have had that discussion, I do not practice -- I am admitted to the Middle District back but that is getting pretty far afield from the location of my office.

Q Okay. And who -- when you say they had made a decision, who are you thinking of?

A Whoever that head of that Public Integrity -- the PIS was as Rob referred to it. And then whoever -- and Karl Rove.

Q And what -- well, from talking to Rob, this conversation you're describing for me was in late January, early February 2005?

A That is correct. Right after -- I was home with the baby for about 3, 3-1/2 weeks or so, and then I started getting out because I wanted more baby clothes and more baby stuff. So --

Q And is your understanding, then, that the conversation between Bob Riley and Bill Canary and Karl Rove would have occurred sometime in 2004?

A I understood -- whenever Alice's case was over -- which we had the discussion -- I don't know when it was over, but I think it was in October or September from what I've been told. But sometime between when that case had ended and when -- and I kind of understood from what --

Q And when you were talking?

A Yes, and when I was talking. And I kind of understood it had occurred before Christmas, but I don't know, November or December. But --

Q But it could have been any time --

A It could have been any time during that time.

Q Okay. And did Rob give you the name of the person at -- I'm just going to call it Public Integrity -- that he thought he understood Karl Rove had spoken to?

A No, he said it was the head guy there and he said that that guy had agreed to allocate whatever resources, so evidently the guy had the power to allocate resources, you know.

Q To the Siegelman prosecution?

A Yes. And that he'd allocate all resources necessary.

Q And did Rob -- well, did you discuss anything else about the reason to bring the case or the decision to bring the case in the Middle District?

A Oh, yes.

Q And what is that?

A I asked Rob why we needed to bring it in that area. And, of course, he mentioned Leura Canary, Bill Canary's wife, would be a good reason as to why to bring it. But he also mentioned Mark Fuller.

Q And who is Mark Fuller?

A Well, at that time -- I had heard about Fuller, but I've never met Mark Fuller so, you know. But Mark Fuller is the Chief United States Federal judge for that district.

Q Had you heard his name before Mark mentioned him?

A Yes, I had.

Q What did you know about Fuller then when Rob mentioned him that day?

A In 2001 and 2002 when I was up here trying to -- helping with the campaign and trying to collect the money on the -- the FEMA deal you read about, I made several trips up here for that. We would meet over at Stewart Hall's office, the Federalist Group. And I brought clients with me too. And I had one particular one that came a lot, but he would bring an entourage of folks who was involved in that FEMA deal. Well, anyway, Rob and Stewart and I had several discussions about these cotton tractors that do the storm work. I represent folks without naming any identities, but they predominantly do one kind of work and it is natural disasters or manmade disasters. And when you do a storm cleanup, you can make, like, 20, 30 million, 15 million in a 60-day period, a large percentage of the time. Rob and Stewart were fascinated by that because they knew Mark Fuller who had been -- Mark Fuller had been at Alabama with us because Stewart Hall was at Alabama when I was at Alabama.

Ms. Lynch. I'm going to object right now. I'm confused about -- are we still talking about a telephone conversation with Rob Riley?

The Witness. This was not a telephone conversation.

Ms. Lynch. I think the question she is responding to was still in regards to what was said to her or by her.

Mr. Broderick-Sokol. The question she is responding to now is what did you know about Mark Fuller when Rob Riley mentioned him.

Ms. Lynch. We're still getting there?

Mr. Broderick-Sokol. We're circling around to it.

The Witness. But anyway, I'll come --

BY MR. BRODERICK-SOKOL:

Q You're giving us a lot of how you know as opposed to what you really knew about Mark Fuller, which is what I want to understand. Why don't you start with -- you had just mentioned college, that he had been at Alabama. Is that what you had understood?

A With Stewart, me and Rob at the same time. But I did not know Fuller at college. They claim I knew him, but I don't recall him.

Q What is your recollection?

A I do not recall him. But they proceeded to tell me that Fuller has all these contracts, but his contracts are not the same type of contracts as mine. They were amazed

that my clients could get these cleanup large sum, whereas Fuller was getting large contract, but he was doing more what I consider to be maintenance on aircraft and fuel contracts, aviation kind of stuff which was not anything I was familiar with. It really sounded kind of like an oil job or doing government contracting.

Q So you knew that he had some business doing these contracts, you have learned this from Rob Riley and Stewart, whose name I'm not remembering.

A Hall.

Q And Stewart Hall. Thank you. Over that period, did you know he was a federal judge when Rob mentioned him to you that day?

A He wasn't a federal judge in 2001 and 2002. And, no, on 2005 on -- when Rob and I were in the office, no, I did not.

Q Okay. But when Rob mentioned Mark Fuller -- well, did Rob tell you he was a judge at that time?

A Rob, asked me, do you remember Fuller and I, it took me a minute and I said, yeah, I remember Mark Fuller. He said he is now a federal judge. I said she that guy that did those aviation contracts, and that's how I -- that's how I connected him.

Q Okay. And in that conversation in 2005, did you talk about Mark Fuller's business dealings in government

contracts?

A We did.

Q And what did you learn at that time?

A Rob told me that Mark Fuller was still a government contractor in 2005 and a United States Federal judge, which I found unusual.

Q Did he discuss with you any of the types of contracts that Mark Fuller was working?

A Yes, he did.

Q What did he say about that?

A He said that Fuller was doing fuel contracts, that he was doing maintenance contracts, that he was doing clothing contracts. He -- he makes flight suits. So you know. And he had Air Force and Navy and that he was -- did contracts with the FBI.

Q Okay.

A And I think the ATF, but -- I'm pretty sure he said the ATF also, but I'm not sure.

Q And did he talk to you about Mark Fuller's politics or political work?

A He did.

Q What did you talk about in that regard?

A I asked him -- he made a statement that Fuller would hang Don Siegelman. And I asked him how he knew that, if he got him in his court. And he said that Fuller was -- had

been on the Executive Republican Committee at Alabama -- in Alabama before he been a judge and he also told me about a backlogging case, which is what you call the salary spike. He called it the "backlogging."

Q Why don't you describe that?

A I had never heard the term "backlogging." So I had to ask Rob what backlogging was. Evidently from what I understand, Fuller had an employee when he was at the DA's job, before he got to be a job in Coffee and Pike. And he had two employees, a secretary and an investigator. And during his term of being DA, somehow that investigator wasn't making your typical salary, he kicked it up. And Rob got to telling me that there was an audit done, a couple of audits, I think, and that Fuller just hated Don Siegelman and thought he was responsible for these audits on those salaried employees and that there was something involving a backlogging because they go back to figure your retirement and there was something kind of backlogging deal. But I didn't fully understand it at that time.

Q And did he say any more about what Don Siegelman had to do with those audits that put Mark Fuller out?

A He said that Don Siegelman had caused Fuller to get audited. That's what Fuller thought. He hated him for that.

Q And this comment that he is going to hang Don

Siegelman, is that -- was that Rob Riley speaking or was he relaying something he had heard from someone else?

A I don't know. You would have to ask him.

Q Did you have any understanding -- well, did Rob say that anyone had spoken to Mark Fuller about the Siegelman case?

A I understood that Rob Riley believed that Mark Fuller would get that case.

Q That is not exactly responsive and you may not know. But did Rob Riley say that anyone had actually spoken to Fuller about getting the case?

A No.

Q Did he say how he knew -- did Rob say how he knew they could get the case to Fuller?

A He said Mark Fuller would be the one who would be that judge?

Mr. Sandler. The question was, did he say how he knew that in the conversation.

The Witness. No. And I didn't ask how he knew.

BY MR. BRODERICK-SOKOL:

Q Right.

A I mean --

Q I understand.

A Some questions are better not asked. So --

Q Take one second to look through my notes before

moving on.

Mr. Broderick-Sokol. Can we go off the record?

[Recess.]

BY MR. BRODERICK-SOKOL:

Q Just really the last area I have to cover is your decision to draft the affidavit that was marked as Exhibit 3. At some point in 2006, did you call Don Siegelman's legal team with the information that you had?

A I did.

Q Who did you call?

A I called Redding Pitt's office.

Ms. Lynch. Could you say that again?

The Witness. Redding Pitt. I may have said it with an S. Redding Pitt. I don't know him that well. So -- but I never met him actually.

BY MR. BRODERICK-SOKOL:

Q Did you talk to anyone from his office?

A I talked to a secretary, but she put me straight through to voicemail.

Q And did you get a call back?

A He never called me back.

Q And at some point, did you end up discussing that the information you had on the Siegelman and Scrushy case with a lawyer named Joe Espy?

A I did.

Q Who is Mr. Espy?

A He was a lawyer for Lowell Barron.

Q How did it occur to you to talk to Mr. Espy about these matters?

A In the fall of 2006, a Riley campaign person came by my office wanting me to meet with the governor at a -- his birthday party out at Randy and Kelly Owens' house, who Randy sings in the band Alabama and Randy's bandmate, Teddy Gentry is my ex-brother-in-law, although he is still my brother-in-law. I mean, we get along. I see my ex-husband every day. But anyway, the thing is this, the governor was having a birthday party out there and they wanted me to meet with them to talk about some campaign stuff. And this lawyer asked me to do some things I did not feel comfortable with.

Mr. Sandler. This lawyer who?

The Witness. He was a disbarred lawyer at that time actually, but he had been a lawyer.

Ms. Lynch. Can I clarify? Was that the campaign worker or --

The Witness. The campaign worker is the lawyer. He was a disbarred lawyer working in the Riley campaign with a guy named Gerald Dial. And that lawyer's name was Hoyt Baugh.

Mr. Broderick-Sokol. Okay. He asked you to do

something you were not comfortable with.

Mr. Sandler. Hold on a second. I'm not clear on the record. The disbarred lawyer's name was --

The Witness. Hoyt Ball. Anyway as a result of that, I ended up calling Joe Espy.

BY MR. BRODERICK-SOKOL:

Q Why Mr. Espy?

A I called Doc Barron, who is the brother of a senator that they had asked me to do this work for, a state senator. And Doc called Lowell Barron and Lowell called Joe Espy. And then they asked me -- it got back down the food chain somehow for me to call Joe Espy.

Q Was Joe Espy a lawyer representing any of these people?

A He represented Lowell.

Q Okay.

A And I told Joe -- all I had told Doc Barron is they asked me to do something I felt uncomfortable with and Lowell needed to be aware. And then, of course, I get this phone call back that they want me to talk to Joe Espy. When I talk to Joe Espy, he recommends that I talk to the Bar. So I ended up calling the Alabama Bar and talking to them about this also.

Q And we're not talking -- we're not talking about the Siegelman-Scrushy prosecution. You're talking about

something they asked you to do that made you uncomfortable, you asked the Bar about that at Joe Espy's suggestion. How did you come to be talking to Joe Espy about the matters that ultimately end up described in your affidavit?

A The Bar said that I could talk to Joe Espy, so I called him back and I told Joe Espy what they had asked me to do. Joe Espy felt it was illegal, I believe. I mean, he indicated that to me. And, anyway, at one point he says good God, why would they ask you, Jill Simpson, lawyer from Rainsville, to do this. And I said, well, I'm the one who took the pictures when Don Siegelman conceded and I said I'm sure you know about that because you represented Mr. Siegelman back at that time. And Joe Espy said, no, I don't know about those pictures, but what are they pictures of?

Q Let me stop you there. Joe Espy represented Don Siegelman?

A Yes.

Q When did he represent Don Siegelman?

A In the election contest in 2002.

Q Okay.

A And I knew that because of having worked with Rob and volunteering.

Q Did you describe the pictures for Joe Espy?

A No. When I realized he didn't know, I decided that

I wasn't going to tell him what was in those pictures at that point. In that conversation. I did later on, but not in that conversation.

Q Okay. When did you end up telling him the things that you knew that would show up in your May 3rd -- your May 21st affidavit that we've marked?

A In January -- end of January, first of February of 2007. That conversation had occurred in 2006 and that -- there was a case that pursued -- I told Joe Espy -- and this might help. I don't know. I told Joe Espy they were fixing to file a suit because that disbarred lawyer had asked me to be involved in something illegal in that. So there was an ongoing suit. So I talked to him. And when the case was being dismissed is the date that he got back on the pictures.

Q Let me -- he got back on the pictures?

A He got back on the subject.

Q And what did he ask you?

A He said, Jill, the case is about to be over with the senators. And he said, so, I really have no conflict in -- you know, you can tell me this and I'd have client confidentiality if you told me kind of what the gist of this was with these pictures. I won't ever tell anybody is basically -- I can't say exactly what his words were, but he said he would not ever tell. But he really wanted to know

what those pictures were of. And he was speculating. His mind was in the gutter and I finally just told him what the pictures were of.

Q Okay. And did you tell him about the conversation that you were on as well?

A I did.

Q About trying to pressure Mr. Siegelman to concede?

A I did.

Q Did you tell him about the reference -- did you tell him about the Bill Canary statement that had been worked out with the Justice Department?

A I told him pretty much the story.

Q And --

A I did not tell him about Fuller.

Q And what did he say?

A I just told him -- I mean, I did not tell him about Fuller and the 2005 conversation. I didn't see that was a need at that particular point.

Q Okay. And what did he say to you once he learned that information?

A What?

Q What was Mr. Espy's reaction to that information?

A Basically he felt I had an ethical duty to call the Bar and tell them what I knew about that.

Q Why did he think that?

A Because he thought that.

Ms. Lynch. I'm sorry. I'm going to object. Did he actually state his thought or are you just speculating to what he thought?

The Witness. I hate speculating anyway. He just told me he felt I should call the Bar. I'm not going to get into what his mental impressions were.

Mr. Broderick-Sokol. Absolutely. And thank you.

BY MR. BRODERICK-SOKOL:

Q So what did you do?

A I called the Bar.

Q And what did they say?

A They said that I should probably talk to Mr. Scrushy's attorney because in that conversation we had talked a lot about Terry Butts who had represented in addition to Mr. Canary, we had talked about Terry Butts, who had represented governor Riley and had also represented Mr. Scrushy. And I knew from some of that conversation, you've not asked me that question, a couple of other things about that. So the Bar said that I needed to call Art Leach.

Q What did you know about Terry Butts representing Mr. Scrushy?

A I knew from things that Rob had told me that Terry Butts would go back and tell the governor things, even

though he acted like they weren't friendly, he would tell --

Mr. Sandler. I'm sorry. This is -- your question was whether Terry Butts had represented Richard Scrushy?

Mr. Broderick-Sokol. Yes.

The Witness. Yes, he represented Richard Scrushy.

BY MR. BRODERICK-SOKOL:

Q In what case?

A In the Don Siegelman-Richard Scrushy case.

Q The criminal case at that time is pending in the middle district of Alabama?

A That's correct.

Q Okay. And Rob had previously told you that Mr. Butts was doing what?

A He would occasionally tell stuff about what was going on with Scrushy's case.

Q To who?

A To Bob.

Ms. Lynch. Bob?

The Witness. Riley.

BY MR. BRODERICK-SOKOL:

Q And when did Rob Riley tell you that?

A I can't say for certain the dates. I mean, I didn't write them down. It was just gossip.

Q But was that in that same January 2005 -- late January, early February 2005 conversation?

A It would have been sometime in the early part of 2005, but I can't say or -- I really can't say a date because I -- I'm hesitant because, I mean, he mentioned that several -- I mean, he mentioned -- he mentioned that Terry Butts was -- he, at one point, mentioned to me that Terry Butts was going to be representing Scrushy, whenever that happened, that's what he mentioned. And then he said that Terry Butts had told him X, Y, Z. And I didn't really write down what Terry Butts had told. So, you know, I can't say specifically what they said, but, I mean, I knew that there was discussion.

Q Okay. Did you go to the Bar after you spoke to Joe Espy as he had suggested you should?

A Yes, I did.

Q And what did they tell you to do?

A Call Art Leach.

Q Who is Art Leach?

A He is an attorney for Scrushy.

Q And did you call Mr. Leach?

A I did.

Q And can you describe the conversation you had with Mr. Leach?

A I told him what had occurred about the Klan rally and the phone call.

Q And did you tell him about Judge Fuller?

A He asked me -- Art told me, he said Jill, you know, this is an interesting story. He said, is there anything else you know -- because if I was you, if I knew anything else right now, I think I would go ahead and tell me, you know -- I mean -- because I just told him that. But he asked if there were other things that I knew that I thought they might should know. And I told him there was one other thing, but I needed to see if I could document it because I didn't want to say anything about a Federal judge that I couldn't document, you know what I'm --

Q Yeah.

A So I told him there are some things and I need to look up those things to see. But I did not -- I didn't tell him what it was. I didn't tell him it was a Federal judge. I just said there is something else, but I'll send you an e-mail on it if I get it. He asked me to do some things for him also in that conversation.

Q Okay. When is this conversation?

A It was sometime before 2/05 because the things he asked me to do I e-mailed him and gave you a copy of.

Q Before --

A 2/05/07.

Q Before February 5, 2007?

A Right.

Q Okay. And what did he ask you to do in that

conversation?

A He -- when I told him my story, he asked me if I still had a copy of the pictures.

Q Okay. And what did you tell him?

A No, but I thought that I might could find a copy because I had been to the Klan rally and I knew that the press was there and I knew that there was videotapes out there.

Q Okay.

A And he asked me to see if I could run those down.

Q Did he ask you at that time to do an affidavit or give him a statement?

A He told me that he would like to take an -- he would like for me to do a statement, a written/sworn statement.

Q Now, Art Leach, you said, is one of Mr. Scrushy's lawyers?

A [Witness nods head.]

Q And Terry Butts is another one of Mr. Scrushy's lawyers at that time?

A Uh-huh.

Q So how did he -- did he say anything to you that he believed Mr. Butts should not be representing Mr. Scrushy?

A Art Leach had a very difficult time when I explained to him -- yes, he liked Terry Butts.

Ms. Lynch. I'm going to object. That is not

responsive.

BY MR. BRODERICK-SOKOL:

Q Did he say anything to you that he did not think Mr. Butts should be representing Mr. Scrushy?

A If I what I said was true, he should not be representing Mr. Scrushy?

Mr. Sandler. The question was, did he say that to you?

The Witness. Yes, he did, you know. But I don't think he -- okay.

BY MR. BRODERICK-SOKOL:

Q And he asked you to do a sworn statement?

A He did.

Q And did you do one at that time?

A No.

Q Why not?

A I really didn't want to be involved with this, but the Bar had told me because after I told Joe Espy, Joe Espy said he thought I had ethical duty. I called the Bar hoping that I didn't. They said I did. So then when I called him, I didn't really want to do that. And, so -- but I told him I would get him a copy of the tapes and stuff like that.

Q Okay. And you also -- I believe you said that you decided not to tell him about the Fuller information because you wanted to see if you could document it?

A That is correct.

Q Given that these were allegations about a Federal judge. And did you make some efforts to document what Rob Riley had told you?

A I did.

Q And did you find any information about Judge Fuller?

A I did.

Q Okay. Let me mark Simpson -- this is 7. This is 6. We never, I think, got a sticker on it. And this will be 7.

[Simpson Exhibit No. 7
was marked for identification.]

The Witness. Can we go off the record a minute?

[Discussion off the record.]

BY MR. BRODERICK-SOKOL:

Q Going forth. I've marked as Simpson 7 a letter from you to Art Leach February 15, 2007 which just looking at it appears to describe information about, quote, your judge and your Mr. Scrushy case. Why don't you tell me what this letter is?

A Well, I got to thinking about what Art Leach had said about telling him anything extra and got to thinking about the fact that they wanted me to do an affidavit and I didn't really want to do an affidavit. So I pulled all the stuff I knew about the judge and I hoped that if I gave them the judge stuff, I would never have to do the affidavit. And this is the letter that I sent. And I tried to make it

as general, not as though it was personal knowledge by me, but just share the facts.

Q The letter doesn't -- it is intentional that this letter does not say Rob Riley told me some of these things, it is just facts that are reported?

A That is correct. Because I didn't want them to ask me to do an affidavit on Judge Fuller for sure.

Q As far as you know, was the information -- well, this letter says it was faxed over and I'll just note that on the third page it says it was the 17-page fax. I have not marked as an exhibit the stack of Fuller-related material that you sent up to the committee. But in addition to this letter, did you send records and documents about the judge's finances and other things to Mr. Leach?

A I sent some, but I didn't send all that I had at that time.

Q Did you ultimately give him everything that you have?

A I did.

Q And do you know if the materials you have provided to Art Leach were used to draft a motion seeking a recusal of Judge Fuller?

A They were.

Q And did you play -- what role did you play in drafting that motion?

A I did not draft or write one word of that. They did send a copy for me to look at and to review to see if I saw any factual mistakes because I had pulled all the stuff and I knew the facts.

Q Did you correct any factual mistakes?

A I actually think that there was one mistake on a figure for one of the contracts and I told them, but I did not type on no page or anything. I think I just orally said I don't think that is the right amount of money in a contract. I think they messed up on the amount.

Q Okay. And are you aware that that recusal motion was ultimately denied?

A I am.

Q And when did you learn that?

A I guess the day it happened from the news or from one of them. I don't know.

Q Well, do you remember when that was?

A It would have been, I believe, in -- it could have been late April, but I think it was around the first of May. I wasn't keeping up with dates.

Q You testified a minute ago that you had hoped that a recusal motion might succeed and relieve you of what you felt was some obligation to do an affidavit. Did the denial of the recusal motion affect your decision, whether to draft an affidavit?

A It did. But the Bar -- and this is one thing I should say. When I sent this letter, the Bar told me -- I talked to them about this that I sent. And I -- I told Rob Lusk they were wanting me to do an affidavit and I didn't want to do an affidavit, you know, if I didn't have to. But the Alabama Bar felt I had an ethical and kind of a moral obligation to do one in light of what I had -- what my story was.

Q I think I missed a name you said. You told --

A Robbie Lusk. I had multiple conversations with him.

Q Who is he?

A He is the general counsel for the ethics portion of the Bar.

Q Thank you.

A And so I kind of felt an ethical duty to do an affidavit with what I knew and in light of all of the circumstances after Fuller recused. I had hoped he wouldn't -- I had hoped he'd rule in a way in a way that I wouldn't have to do an affidavit.

Q Okay. We have been speaking about contacts you've had with Art Leach who represented Mr. Scrushy. Did you have contacts with anyone representing Mr. Siegelman about drafting an affidavit?

A I have only had two contacts with Mr. Siegelman.

Q I asked about anyone representing him first.

A I've never had any contacts with anyone representing him. I've not spoken with one of his lawyers to date.

Q Okay. And you have had contacts with Mr. Siegelman himself?

A Two.

Q How did those come about?

A I believe it was February sometime.

Ms. Lynch. I'm sorry. Of this year?

The Witness. Of 2007. It was after I had talked to Art Leach. I asked a friend of mine who I do legal work for to run an AutoTrack for me on Mark Fuller. And which basically will -- what an AutoTrack is kind of like a list that shows all these finances and I was running all these planes that he owned because he owned -- his corporation owned a bunch of planes and it is kind of an investigative computer generated program. Mr. Bollinger knew Mr. Siegelman and he asked me --

Q And who is Mr. Bollinger?

A He is a client of mine.

Q And is that the one you were just referring to a moment ago?

A Yes.

Q Okay. So you asked Mr. Bollinger what?

A If he would run an auto track for me on Fuller.

Q Yeah. But then you were just about to say something

else you asked him?

A And -- well, I didn't ask him anything else but to run an AutoTrack. Anyway when he ran the AutoTrack, he basically asked me what is this about and I told him that I was trying to avoid having to give an affidavit, you know, because the Bar kind of felt I had this moral/ethical duty. And he said that he was going to contact Don Siegelman. And I told him I don't think you ought to do that. And he said, well, you didn't tell. So around that same time I had written the letter -- I think I had already written the letter but I'm not certain on that. So he --

Q Had already written what letter?

A This letter, the 15th, the February 15th letter.

Q Okay. Simpson Exhibit 7.

A And he called Don Siegelman and he told Don Siegelman the judge thing. Don had already heard, I reckon from what I understood, through Scrushy's bunch, the phone call, but had not heard the Fuller stuff or whatever. But he called and told Don the Fuller stuff. And then Don called me because Mark called me back and said that Don Siegelman wanted to speak to me. That is the first time I ever talked to Don Siegelman.

Q Okay. Did he -- when did you speak to him?

A I don't know what the date was.

Q In this same period of February 2007?

A Yes.

Q After you sent that letter to Art Leach?

A I'm not certain if the letter had gone out. I was already working on it. I can't say with certainty.

Q That's great. And did Mr. Siegelman phone you?

A He did.

Q And where were you when you got that call?

A I was at my office I believe.

Q Was anyone else with you?

A No. Mark had called me at home and said that Don was wanting to talk to me and I said, well, I'm heading to the office. So as I recall, it was at the office.

Q Okay. And what did Mr. Siegelman say?

A Mr. Siegelman knew about the phone call circumstances by that point and I don't know how for certain. But he also asked me about Judge Fuller.

Q Okay. Did he ask you to do an affidavit?

A He told me it would help if I would do an affidavit, would I mind speaking to his lawyers and doing an affidavit, and I told him at the time that I didn't really want to do an affidavit if I didn't have to, but I had been doing that research on Fuller and -- from what Rob had told me -- and thought I could avoid it.

Q Okay. I think you said you had two conversations with Mr. Siegelman.

A Yeah, that one lasted about 45 minutes. The next one, he shows up sometime in March or April over at Mark Bollinger's house or office. I think maybe an office. I don't know. They just called me from a number. And asked me again if I would do an affidavit. And that was a 10-minute phone call. They were going to see Artur Davis, I think, because it seems like they mentioned he was speaking somewhere. And they were going to go see him, that Mr. Siegelman was. And he invited Mark to go with him.

Q To see Mr. Davis speak. Did -- was that before the recusal motion had been denied?

A I believe it was.

Q And did you agree to do an affidavit at that time or were you still holding out hope of avoiding doing it?

A I was holding out hoping to avoid doing it.

RPTS SCOTT

DCMN BURRELL

[2:35 p.m.]

BY MR. BRODERICK-SOKOL:

Q So, ultimately, what changed your mind, and why did you finally decide to draft the affidavit that was marked as Exhibit 3?

A Well, I thought it was the right thing to do.

Q And the affidavit is dated?

A March 21 -- May 21st.

Q May 21st. When did you begin drafting it?

A When did I begin?

Q Well, why don't you describe for me how this affidavit became drafted?

A Okay. I told John Aaron I was nervous about drafting the affidavit.

Q Who is Mr. Aaron?

A He is a lawyer.

Q Who does he represent?

A No one in this deal, technically, I don't reckon.

Q Why were you discussing it with him?

A In the first phone call that I had with Don Siegelman in February or early March -- and I think it was February -- he said that John Aaron was a political researcher, and I told him what I had been researching about

Mr. Fuller and that I was still pulling up stuff, Judge Fuller, and he had had -- he said, well, John Aaron could help you, and he said, "I'll have him give you a call." So John Aaron gave me a call on pulling up, but I sent you all --

Mr. Sandler. Just let him ask the question.

The Witness. Anyway, John Aaron, I just got to know him through that, and that's -- I just asked him to help me write the affidavit.

BY MR. BRODERICK-SOKOL:

Q In terms of advising you?

A Yeah, a little bit.

Q You had talked to him about the facts of the Klan rally in the phone conversation before?

A Yes.

Q Okay. Start again -- not again -- but continue. You spoke to John Aaron.

A And I asked him if he would just help me with the affidavit, but I didn't like his affidavit at all, so --

Q Did he prepare a draft of an affidavit?

A He did.

Q Roughly, how far before May 21st was that?

A I don't know if it wasn't the same day. I don't recall if it was 2 days or 3 days or what. I mean I just -- it seems like it was a couple of days before, but I kind of

just kept delaying.

Q Okay. So he prepared a draft and gave it to you. What was your reaction when you looked at it?

A I didn't like it.

Q Okay. Well, what didn't you like about it?

A I thought I just needed to do it. John Aaron, he just did a basic affidavit that was about Terry Butts.

Q Okay. So the focus of it didn't include everything you thought it needed to include?

A Right, and I felt like if I was going to do an affidavit I only wanted to do it one time, and they asked me to do it on the specific day. I knew the events that had occurred, and so I sat down with my secretary on the day that that thing is signed, and I redid the affidavit completely.

Q Did you start from scratch or did you start with Aaron's and change it around?

A I'm not certain. I basically got kind of the format of what they wanted in an affidavit, and I do affidavits occasionally, but I just -- but I don't know whether she did it from theirs or not. I dictated to her what I wanted to say. That's what I recall.

Q So she was typing and you dictated?

A That's what I did.

Q Did you just start and dictate straight through one

time?

A I don't know. I may have looked at John Aaron's affidavit. I mean I may have had her print it up and looked at it, and then I dictated what I wanted my affidavit to say, so I pretty much -- you know, I'm not going to say -- like, I may have kept the first three sentences that he said or whatever. You know what I mean?

Q Yes.

A Whatever, but I dictated what I wanted to say.

Q And she did the typing?

A Uh-huh.

Q And you said that was this very same day, May 21st?

A That's correct.

Q Did anyone else review it before you signed it other than yourself and your secretary?

A As I recall, I called Mark Bollinger to tell him that I was going to go execute this at a lawyer friend of mine's office in Georgia because I had called him up, and I told Mark that I wanted to deliver it to him in Georgia, and so he pretty much had to drop everything to meet me because he had other plans because I'd just got on this whim of going ahead and doing it, and he said he would meet me over in Rising Fawn, Georgia, and he said, "Send me a copy," and I think he made a grammatical correction as I recall, but I don't remember what the -- if I put a colon or a period or

what that he didn't think needed to go somewhere, and he may have corrected a spelling on a word or something, but I mean it was grammatical.

Q Did he make any substantive suggestions about what should be or not be in the affidavit?

A I don't recall him saying there was a change on a word. I do recall that he said for me to say -- he said, "How are they going to know that was Karl Rove?" And I said, "Well, he just said, 'Karl.' He didn't say, 'Karl Rove,' so that's what I'm putting." I do recall that. You know what I mean?

Q Yes.

A And that's about it, so I didn't make the change.

Q Right.

A I do recall that he suggested a change that I didn't make.

Q Did anyone else review it before you executed it?

A I don't know if he sent it to John Aaron, or not because he had talked to John Aaron. Mark had done an affidavit also, so --

Q But you never spoke to John Aaron about what should or should not be in the affidavit that day?

A I may have got an e-mail after the fact, but I don't recall speaking to John Aaron beforehand. John Aaron had asked me several times on his original affidavit if I was

going to sign it, and I said, "Well, that's really not what happened, so I've got to write what happened exactly."

Q Okay. You went to Georgia. You executed it.

Did Mark Bollinger meet you there?

A He did, and on the way there, I called Richard Scrushy's office and told them.

Q How did you get it to them?

A That was the agreement. Mark would meet me in Georgia and take it to John Aaron, and Scrushy got -- I called their office or his number or whatever -- I don't remember -- and told him that I had decided to do an affidavit and had done it because they had called several times.

Q Yes. Okay. I have a couple of more questions about a couple of things that have come up around the affidavit that I'm going to ask, and then I'll be done and in plenty of time for your 3:00 o'clock.

So, before I do that, though, I want to go back to something that I think -- I don't recall whether or not -- I want to make sure I understand your testimony correctly.

In late January/early February when you'd stopped by Rob Riley's office and you'd talked to him, you described somewhat the conversation you had about Alice Martin's bringing a new case and Judge Fuller.

Was Mr. Scrushy discussed in that conversation?

A He was.

Q Was the possibility of prosecuting him discussed as well?

A Yes.

Q What was said about Mr. Scrushy in that conversation?

A Rob said that they had come up with an idea to prosecute Don with Richard Scrushy.

Q Did he say why they thought that was a good idea?

A Because nobody likes Richard Scrushy, and he thought that that would assure a conviction for Don Siegelman.

Q Okay. Thank you.

You executed this affidavit back in May. It's been the subject of a decent amount of public attention, and you've had a good deal of time since then to think over these matters and to talk about them with me and with journalists and others. So I guess I wanted to ask:

At this point, do you still stand by everything that's in your affidavit?

A 100 percent, yes.

Q Is there anything you'd like to correct or to change that's in there that you don't think is correct?

A There's only one thing that I've figured out, and I thought about it after I saw the videotape. I took two cameras that day, and I have it reading like I gave them

some pictures in one camera. I actually gave them two cameras, and I don't know why my memory got jarred that day, but I actually would -- I say in here that I took -- that I had one camera, I think, and --

Q In paragraph 9, you say, "I took pictures on a disposable camera."

A On a disposable camera. I should have said "disposable cameras," but that's the only thing.

Q Okay. Is there anything else?

A No.

Q Okay. One thing that I've read are claims by some that one reason you might have done this affidavit is that you were, quote, "a disgruntled bidder on a tire contract." I guess what is your -- I suppose the simplest way is:

What is your reaction to that statement?

A Well, one, I'm not a bidder. Mr. Bollinger was a bidder.

Q Okay. Did you represent him in the bid?

A I did.

Q Have you represented other bidders who don't get contracts?

A Yes. I've never done a statement on any of them about something like this either, I can assure you.

Q Okay, but did the denial of that contract -- I mean did it cost you money of income you might have earned?

A It did. I get legal fees for the work that I do in contracts, and you know, it just depends on what the legal fees are set up to be per a contract basis.

Ms. Lynch. I'm not sure that actually responded to the question.

BY MR. BRODERICK-SOKOL:

Q Is the implication of your statement that you might have made money on this contract and that you didn't because it was denied?

A That's correct. There is no way to know what a contract like this would cost -- you know what I'm saying? -- I mean whether you make in the end or not.

Q Sure.

A Sometimes you do when you do government bidding, and sometimes you don't.

Q Sometimes a contract like this can go down, and the bidder can lose money. Is that what you're saying?

A Right, and so --

Q Well, do you or Mr. Bollinger hold the rallies responsible for his not getting that contract?

A Absolutely not. In fact, it's Don's people that cost us, probably, the contract, Mr. Siegelman's.

Q It's Don Siegelman's? Why do you say that?

A It's Don Siegelman's people, the ADEM. The way they do these ADEM committees --

Q What's "ADEM"?

A Alabama Department of Environmental Management.

Q Okay.

A They have a board of directors and all that that's on it, and they had a lot of holdovers of Democrats, and in fact, a Democrat lobbyist actually shepherded through the guy who got the contract.

Q Okay.

A So, if I had any reason to be mad at anybody -- we've really gotten a howl out of this one. If we had any reason to be mad, I should be mad at Don Siegelman.

Q Okay. Did either you or the bidder have any -- well, have you had further dealings with the Riley administration since that contract was denied?

A Yeah. In fact, I warned Bob. I sent him a letter because the Democrats were going to put him on top of the tire pile with the tire guy who was an illegal tire dumper, so I warned him about it after the contract was awarded. So, if I'd had a problem with Bob on that, I would not have warned him, and he did not go. In fact, the newspaper carried -- it's kind of an interesting little story.

Q I think you should stop.

A Okay.

Q I'm not sure what question to ask, but can you just describe it a little more simply for people who are not

familiar? I'm not fully understanding --

A I gave you a copy of a letter that I sent to Don -- to Bob Riley on --

Q I just want a short description of the communication you had with Bob Riley that you were just referencing that saved him from an embarrassing appearance, I think.

A On August 7th of 2002, I called Bob Riley's office, and I sent -- and talked to Toby Roth, and I sent him a copy, and Mark Bollinger also called -- my boss that I was working for, you know, doing the legal services, called Toby also, and I sent him a copy of a document that showed that the guy who they'd awarded the tire dump to had been determined to be an illegal tire dumper in Georgia, basically, and that he had actually illegally dumped the tires in Alabama, and Bob Riley was supposed to, the very next day, get out on top of the tire pile with the guy and get his picture. There's a whole series of newspaper articles where Bob Riley was supposed to go, and he failed to show up. He took my advice, did not go, and did not get his picture, and the series of newspaper articles in Alabama was "Where's Bob?" Kind of like "Where's Waldo?" It was where was Bob that day.

Q Okay. This occurred after the contract had been awarded?

A Right.

Q Okay.

A Then Mr. Bollinger -- you know, I've read that so much. Mr. Bollinger also threw a big reception for Bob with another gentleman. I don't know what they spent, but they had him a reception over in Guntersville. Well, I did not get to attend that, but --

Q That was a fundraiser?

A A fundraiser after all this, too. So where all this comes from, I don't know.

Q When you say "after all this," do you mean after the contract was denied Bollinger participated in holding a fundraiser for Governor Riley?

A He was -- he wasn't -- he didn't participate. He was the thrower. He and another guy threw the party --

Q Okay.

A -- for the --

Q Thank you. That's great.

A That's what they told me. I didn't see the checks, but that's what they told me was they threw the party, so -- and I believe them.

Q Okay. I have two more questions. One is:

Has anyone offered you anything in exchange for speaking out on this subject or for providing the affidavit that you did?

A No.

Q Three questions. Has there been any -- strike that. Two questions.

Have there been any costs to you for speaking out in this way?

A Absolutely.

Q And what have those been?

A Well, I had to pay my lawyers to come up here. I've had to come up here. I had to buy my lawyers dinner last night. I mean, you know, I've had to pay for the phone calls that I've had with my lawyers. I mean, you know, all my travel. I mean, it's just an expensive endeavor.

Q Has it affected your business?

A It has dramatically affected my business. I mean it's bad when you have -- I mean my income's way off. I have not done a percentage, but it's way off for the summer. When you're called a liar every day in the newspaper, it's pretty significant --

Q Okay. Is there anything else --

A -- especially when you're called a liar by powerful people.

Q What about the personal cost to you? Has there been any?

A I don't know if at this time, really, there is or there isn't. You know, I've had some unfortunate events,

but I can't say that any of those were caused by that. The press tries to claim that, but I've told them, you know, I don't know, but I have had some unusual events.

Q Okay. I was, actually, just thinking more along the lines of the stress of it all, but --

A Oh, I want to tell you it has been very stressful, and it's been difficult for my family. People have challenged that we're Republicans. My mother was on some kind of business council at some point where the President would invite people, you know, to come up for dinners and stuff like that, and she never came, but she got -- you know, she always got the invitations and all that, and people have said, you know, "Jo," they say, "you're not a good Republican." I mean she had all kinds of awards in her office, when she was an accountant, from Tom DeLay, and I mean -- and when I say "awards," you know, plaques and stuff because Mr. DeLay sent out a lot of that kind of stuff, and so she -- it's caused her a lot of embarrassment.

My sister, she -- she loves the Bushes, I mean, and always has. I mean she worked for Mr. Bush before he --

Ms. Lynch. I think we've reached the point where the question is answered here.

The Witness. -- at River Oaks Bank and Trust, so --

Mr. Broderick-Sokol. Okay. I think I just --

The Witness. -- and that's been hard on her, too.

Mr. Broderick-Sokol. Okay.

The Witness. So, yes, it's been hard on my whole family.

Mr. Broderick-Sokol. Okay. With that, I'm done.

Why don't we go off the record.

[Recess.]

EXAMINATION

BY MS. LYNCH:

Q Let me just do a couple of like housekeeping questions, and then we can move into some of the follow-up questions I have on the phone call.

A That's okay.

Q Aside from Mr. Sandler and Ms. Duncan, are you represented by any other counsel?

A No, I am not.

Q Have you been represented in the past year on this issue by any other counsel?

A I talked with Tommy Gallion.

Q And how do you spell his last name?

A T-O-M-M-Y.

Q And his last name?

A It is Gallion, G-A-L-L-I-O-N.

Ms. Duncan. Yes.

BY MS. LYNCH:

Q Did you speak to him in reference to --

A This case.

Q -- this case?

A Yes, and some of his partners.

Q So was he providing you legal counsel?

A He was.

Q But he is not at this time?

A He -- I have talked to Tommy, but right at this particular time, no.

Q So you would not consider him to be retained as legal counsel on this matter at this time?

A I talked to Tommy as late as yesterday, but technically he is not my lawyer on this at this time, but he has been.

Q So you spoke to him yesterday, but today he is not your lawyer on this issue. Did you speak to him yesterday about this issue?

A I spoke to him about this case yesterday, but he is not technically my legal counsel.

Q Okay. Let me just refer you back to your affidavit.

A Okay.

Q You mentioned that you swore out this affidavit in Dade County, Georgia. I'm not sure if you explained why as opposed to in the counties that you practice in in Alabama.

A Well, I'll tell you why, because it said Leura Canary's name in it, and it said Alice Martin, who are both

powerful women in my state, and I knew that Rob Riley's daddy had appointed the AG, who was Troy King, and that Troy had had some issues about some political cases that he had brought that Rob had told me stuff about, and so I decided to go to Georgia to do my affidavit.

Q So you're saying if you'd sworn out the affidavit in Alabama --

A I just didn't want to be subject to their jurisdiction for any shape, form or fashion for any reason whatsoever.

Q And swearing the affidavit out in Georgia --

A Would have brought different prosecutors to look at this case, and I felt like I would get a fair shake from that. I don't know a single solitary prosecutor in Georgia, so that you know, either.

Q At whose office did you swear out the affidavit?

A I did it at John Emmett's office.

Q Who is John Emmett?

A He's an attorney that I know in Georgia.

Q Was he your attorney?

A No. I called John's office and asked his secretary if -- I did not even talk to John about this. I just asked her if she would notarize my signature.

Q So it was notarized by his secretary?

A That's correct.

Q Let's see. I'll ask you some questions now about the phone call on November 18th, 2002.

You stated earlier today that you placed a telephone call to Rob Riley, and it was during this telephone call that you were put on speakerphone, and other persons were in the room on the telephone call.

A Uh-huh.

Q In your affidavit, I'll refer you to paragraph 11 --

A Okay.

Q -- on the page marked "Simpson 2." It refers to multiple phone calls --

A That's correct.

Q -- between you and Rob Riley.

A It says there were multiple calls from me for -- to me from Rob Riley and other people. It does not just say "Rob Riley."

Q Right. So when did these multiple phone calls take place during that day? Were they before or after the phone call described in paragraphs 12 and 13 and beyond?

A There was a call that I have from a guy who was to pick up the pictures. I talked to Rob Riley that afternoon at some point in time. He called me and told me to watch the 6:00 o'clock news. Don would be conceding. I talked to my girlfriend.

Q Okay, but I'm just curious about conversations

between you and Rob Riley.

A Okay.

Q So you're saying, other than the phone call described in paragraphs 12, 13 and beyond of your affidavit --

A I had a couple of more phone calls.

Q You had a couple of more phone calls, and they were after the phone call described in your affidavit?

A Yes, and I talked to one of my girlfriends who also knows Rob. I talked to her about those pictures, too. So I mean, you know, I talked to a bunch of people about the pictures.

Q Okay. I'm going to also refer you to -- so, actually, strike that.

As to the phone call that involved Rob Riley and, you say, Mr. Butts and Mr. Canary and other individuals, what time did that occur on November 18th?

A It occurred when I called Rob from my car.

Q And what time was that?

A It's 10:50. Right about 10:52, I think, is what the time was on it. I mean I have to go by the record on what it was, and it says "10:52," so --

Q I'll refer you then to Exhibit 4. This is the telephone billing record for the phone -- actually, 899-3601. You indicated earlier today that the last

phone call on that page dated 11/18 at 10:52 a.m. is the phone call you're referring to?

A That's correct.

Q Can you explain to me why it reads one message for 11 minutes?

A I think what that is is these are the out-of-area calls, and I have a cooperative phone -- my cell phone is a cooperative.

Q Can you, actually, answer the question of whether you know why it says "message" or not, I mean, as opposed to just speculating about how the phone company might bill? Do you know for certain why it says "message"?

A I see those when I call out of the area.

Q So this is not a voice mail?

A That's not a voice mail, ma'am.

Q Okay. So, as to the phone call that occurred, as you say, at 10:52 a.m. on November 18th, you stated earlier that -- I'm sorry. You placed a phone call to Rob Riley. Is that how that phone call began?

A Yes, it is.

Q And so then what happened after that?

A People were added into the phone conversation.

Q By whom?

A By Rob.

Q Okay. So Rob put you on speakerphone or he dialed

in other individuals?

A I know that Bill Canary was added. I do not recall how. I remember the speakerphone was turned on when Terry Butts and a roomful of people got in there.

Q So Bill Canary, as you said, is dialed into the phone call, but Terry Butts is in the room?

A I can't say how Bill Canary was added on.

Q So he might have been in the room, but he might not have been?

A I can't say, ma'am. I don't know. I wasn't in the room. I just know he was on the phone.

Q Okay. That's fine. You did mention, too, that, aside from Rob Riley, Bill Canary and Terry Butts, there were other individuals who you could hear because you were on a speakerphone?

A I recall when we were talking to Terry Butts, particularly in my conversation with him -- Terry is more entertaining. Bill Canary is more a businessman, okay?

Q Ma'am, if you could just answer the question.

A Sorry.

Q There were other people -- you could hear other people in the room during that telephone conversation?

A Not on the telephone call, but in Terry Butts' portion of it, when Terry started talking, yes, they started howling, laughing.

Q Could you tell how many people were in the room? Was it two? Was it five? Was it ten?

A I have no idea, ma'am, but it was more than one.

Q In your affidavit, you've attributed certain statements to particular individuals, whether it's Mr. Canary, Mr. Riley or Mr. Butts. How were you able to identify their voices?

A They're different.

Q So had you spoken to Terry Butts on the phone before this?

A I had never spoken to Terry Butts on the phone before.

Q When he was making the statements that you allege in the affidavit, you are certain that you can't attribute that to any of the other people who were in the room at the time?

A I'm certain that that was Terry Butts or the person talking identified himself as Terry Butts.

Q Had you spoken to Bill Canary on the phone before?

A Bill Canary had been on a phone conversation that I had had with Rob before. I think he had actually been on one or two.

Q Had he spoken during that telephone conversation?

A Uh-huh.

Mr. Sandler. Are you talking about the prior telephone conversation?

Ms. Duncan. Say "yes" or "no," please.

The Witness. Yes.

BY MS. LYNCH:

Q For how long did that conversation last?

A I don't recall. I just know that Bill Canary had been on a couple of other calls before.

Q Did you make any notes about the telephone call that occurred on November 18th?

A I was in my car, reporting the pictures. No.

Q So, later that evening or any time after that -- the next week, the next month, a year later -- at no point did you make any notes about the phone call?

A No, I did not, but I wouldn't have forgotten it because it was an interesting phone call. It caused Governor Siegelman to concede or at least that's what I thought was going to happen.

Q You've described several other conversations, particularly with Rob Riley, after November 18th, 2002. I guess the first question I have is:

How long have you been a licensed attorney?

A I have been licensed since May of '89.

Q Have you had occasion to assist a client with preparing an affidavit?

A Yes, I have.

Q Okay. How many times would you say you've done

that?

A I have no idea.

Q Less than six? More than six?

A A whole bunch.

Q A whole bunch? Okay.

A That would be the best way of saying that.

Q The telephone conversation -- let's see.

There was, first you said, in late November/early December a telephone conversation between you and Rob Riley that was -- for lack of a better word, I'll characterize it as maybe a "follow-up."

A Not really. Rob and I talked regularly.

Q Okay.

A I mean it wasn't a follow-up.

Q But it was during that telephone call that you again discussed Siegelman's conceding the election?

A Yes, ma'am.

Q Okay. According to what you said earlier, apparently Mr. Butts indicated to Mr. Siegelman that on November 18th that not only would the pictures and photos of the Klan rally disappear, but also any future prosecution would go away; is that correct?

A That's what I understood Rob to say that Terry stated, yeah --

Q So your phone call --

A -- that Terry had told Rob that, yes.

Q And he had told that to Mr. Siegelman on November 18th. That's your understanding from Mr. Riley?

A I understand that Terry told Rob that he did that, yes.

Q So it wasn't just an issue with the KKK rally; it was now an issue that all future prosecution would go away?

A Yes. Right.

Q Then there's a conversation in early 2005, which I believe -- I just want to make sure my notes are correct on this. This was a face-to-face conversation in Mr. Riley's office?

A That's correct.

Q You mentioned that you had stopped by to show him some baby pictures.

A Yes.

Q I'd just like to ask you a few questions about that conversation. You say that -- excuse me. I'm sorry. I'm just reading my notes real quick.

You said that, I guess, Rob stated he had gotten wind that Siegelman was going to run again --

A That's correct.

Q -- I assume, for Governor.

A Yes, ma'am.

Q At this point, hadn't Don Siegelman been indicted on

Federal bribery charges?

A He had had the Alice Martin case, and it had been dismissed.

Q But he had been indicted on Federal charges?

A But it was gone from what I understand.

Q "Yes" or "no," he had been indicted on Federal charges?

Mr. Broderick-Sokol. Well, maybe if you specify which case or which court.

The Witness. I'm unclear.

BY MS. LYNCH:

Q Okay. Well, in the Northern District of Alabama in which Alice Martin is U.S. Attorney, at the time that you had this conversation with Rob Riley, Governor Siegelman had been indicted in that case. Yes, the charges had been dropped, but he had been indicted?

A Yes.

Q Were you aware of the fact that Governor Siegelman had been indicted on those charges?

A I think so as I recall.

Q Okay. You said that Bill Canary and -- you know, their names are so close together. My notes say Bob Riley, but I'm not sure if you meant Bob or Rob.

A I meant Bob.

Q So you meant Governor Riley?

A I did.

Q Okay. So you said that Governor Riley -- or Rob Riley told you that Bill Canary and Governor Riley had a conversation with Karl Rove?

A That's correct.

Q And Rob Riley told you that Karl Rove then went to the Public Integrity Section regarding former Governor Siegelman.

A That's correct. He said "his section." That was his use of it, but yes, ma'am.

Q In that same conversation, Rob Riley also said to you that he or some group of people had come up with the idea to prosecute Mr. Scrushy along with Mr. Siegelman, as you put it, because everyone dislikes Mr. Scrushy; is that correct?

A That's not exactly a correct characterization as to the way you said it.

Q Why don't you tell me what Rob said to you regarding that matter?

A That they had come up with the idea.

Q And who is "they"?

A I have no idea for certain. I mean I understood it to be Rob and them, but -- and if I said that earlier, that's what I understood, but he said "they" --

Q That's fine.

A -- which I understood to be Bob's bunch of close folks.

Q But he didn't actually identify anybody. He just used the word "they" to the best of your recollection?

A He may -- I understood he was in on it, but I think probably he said "they." I mean I can't say 100 percent, but --

Q Okay. So what did Rob say to you?

A He basically said that they had come up with an idea to reindict Don and that they were going to include Richard Scrushy, and they had figured out a way to do it, and I basically asked them what was the way you're going to do it, and I mean this is not verbatim, but I basically asked him what way are you -- how are they going to do that, and he proceeded to lay out to me the lottery issue.

Q I'm sorry. What is the lottery issue?

A Evidently, Don had some kind -- I mean and this is just from my knowledge. This is not from -- but he did explain to me the lottery issue. Don --

Mr. Broderick-Sokol. I'm sorry.

BY MS. LYNCH:

Q Who explained the lottery issue to you? Are we still talking about your conversation with Rob Riley or are you now referring to a different conversation?

Mr. Broderick-Sokol. I think you asked what was the

lottery thing.

The Witness. That's what she did. She asked me what the lottery thing is.

Ms. Lynch. Okay. Then that's my fault. What I'm trying to do is --

Mr. Broderick-Sokol. I wasn't saying that. I was just trying to retrace where we were.

The Witness. Rob explained to me that they had figured out a way through the lottery circumstances -- and I don't recall all the details -- but that they had a connection with Don and Richard Scrushy on the lottery issue, and that's --

RPTS McKENZIE

DCMN NORMAN

[3:33 p.m.]

BY MS. LYNCH:

Q Okay. And what do you mean by the lottery issue? What did you understand Rob to mean by the lottery issue?

A Rob made some mention that Don had gotten some money from Richard Scrushy to pay off a lottery debt. That's -- and I don't know exactly -- I don't recall exactly all the details as to what he said, but the gist of it was, is that he got money illegally from Richard Scrushy.

Q I'm sorry. Who got money illegally from Richard Scrushy?

A Rob implied that Don Siegelman had gotten money illegally from Richard Scrushy. That's what his tale was.

Q Okay. And that was to pay off a lottery debt? That was your understanding from Rob is it was a lottery debt?

A A lottery debt. I didn't understand all of it, you know, but that's -- I didn't ask. It's not always good to ask questions. I didn't ask that question.

Q I guess in that -- I believe it's in the same conversation that you discussed Judge Fuller?

A It is.

Q Okay. And I'm a little unclear. Did you know Judge Fuller from undergraduate or not?

A I did not. They say I know who he is. That's what Rob had kind of indicated. He said, oh, you know Judge Fuller. I'm like, no, I did not. To my knowledge. I can't say I never met the man because they say I have, but I don't think so.

Q And at the time that you had this conversation with Rob, was Judge Fuller a judge? Had he been appointed?

A Yes, he was a judge.

Q But you were not aware that he was a judge?

A I didn't go to the Middle District. Even though I'm admitted in the Middle District, I went one time to the Middle District out of my 18 years.

Mr. Sandler. Were you aware?

The Witness. No. I'm sorry.

BY MS. LYNCH:

Q So you discussed with Rob Riley government contracts that Judge Fuller had?

A Yes.

Q Is that correct? I think you mentioned that they were fuel contracts or maintenance contracts or clothing contracts. Could you explain a little bit more when you say that Fuller had these contracts, what do you mean? Did he personally hold government contracts?

A He had a corporation.

Q What was the name of that corporation?

A It was called Doss Aviation, and he also had one called Doss of Alabama. But I don't think that I realized -- I think I knew about the Doss Aviation. But until I ran him, I don't think I knew that -- I thought that the clothing was made under Doss Aviation because it was flat suits, as in --

Q Okay.

A But it's got two names.

Q Doss Aviation?

A And Doss of Alabama. We actually talked about that company, too, that day, Doss Aviation.

Q And could you just explain for me a little bit about how Judge Fuller's ownership or, you know, involvement in Doss Aviation was discussed in relation to Mr. Siegelman or Mr. Scrushy or your previous telephone conversation? Just connect the dots for me, if you would, please.

A Okay. In that conversation in early 2005, Rob started talking about Mark Fuller. And I'm like, Where have I heard that name? Because I'd heard it before. And he tells me, he says that Mark was going to be the judge. He said, Oh, you know him. I'm like, No, I don't. He said, I think you do. I said, Is he that guy y'all said before that does them aviation contracts? And that's when he proceeded to say, Yeah, he has a company called Doss Aviation. I said, Is he still doing that since he's become a judge?

Something along that lines I can't say verbatim, but something along that line. And he said, Oh yeah; and he proceeds to start telling me about the company.

Q So in that conversation, Rob told you that Judge Fuller was going to be the judge on a case prosecuting Siegelman and Scrushy together?

A That's what I understood.

Q Let me just back up a second and do a couple of questions on -- for both this conversation that you had face to face with Mr. Riley and for the telephone conversation that was in either late November or early December of 2002, did you make any notes of either of these conversations?

A No. I never made notes of what I talked to about Rob. We were just gossiping. So --

Q Okay. So anything that you're describing to us is based just on your recollection today? You don't have any notes that you made at the time that the conversations happened or anything like that?

A No. But I -- the thing is this: I've never forgot about Mark Fuller because he --

Q Okay. That's fine. You are basing this off of your memory today as opposed to any notes that you made at the time?

A I didn't make any notes at the time.

Q Okay. Fine. I guess I'm curious to know that,

aside from the conversation described in your affidavit, you have had -- you've described today now two subsequent conversations with Rob Riley where it is, at a minimum, implied that there was -- first in the conversation of late November, early December 2002, that Mr. Butts had maybe not guaranteed but had made some assurance that Siegelman would not face any prosecution if he conceded the election challenge?

A Yes.

Q So that's the first conversation. And now in early 2005 you have a face-to-face conversation where Rob Riley makes statements to you that there has been planning as to how Mr. Scrushy and Mr. Siegelman would be prosecuted, that he was aware that Judge Fuller would be the judge on the case, that Judge Fuller had made a statement that he was going to hang Don Siegelman.

I'm curious to know, did this trouble you at all?

A It did.

Q So what did you do in response to this? Did you --

A I told Rob at the time that I did not think, just so you know, that Don Siegelman and them, their bunch, I said, They'll probably file to get him out. Rob said, Well, I don't know.

Q They'll -- I don't understand what you mean by file to get them out.

A Rob told me all these things about Fuller, and that he thought Fuller would be the judge. I told him I did not -- I figured they'd file objections or something like that. So I didn't know.

Q Okay. That's not responsive to my question. My question is, my question is, first of all you say that you were troubled by the things that Rob Riley was telling you.

A Yes.

Q You've been a practicing attorney for nearly 20 years. And according to you, someone has just made statements that there is some sort of planning or, you know, cooperation going on in relationship of how the former Governor of Alabama was going to be prosecuted.

And I'm asking you, did you report this to the Alabama State Bar, did you make any notes of it, did you feel that there was any duty on your part as a licensed attorney to report this conduct that we're now just hearing about for the first time today?

A Rob had told me what I considered to be hearsay. I had not -- as far as regards to those things. And I had not checked them out.

Q So you're saying that because you could not substantiate statements made by Rob in these conversations, you felt that you shouldn't report those to the Alabama Bar. Is that what you are saying?

A Right.

Q The statements made in your affidavit that you report the conversation of November 18, 2002, would you also characterize those as hearsay?

A I would not characterize them. I was on that conversation.

Q But Terry Butts in -- let's see. I'll get you the paragraph here. In paragraph 16 on what's marked as Simpson 3 of -- Exhibit No. 3, your affidavit characterizes the conversation as -- and I'll quote this: That William -- Bill Canary told him not to worry, that he had already gotten it worked out with Karl, and Karl had spoken to the Department of Justice and the Department of Justice was already pursuing Don Siegelman.

Would you not characterize that -- the conversation, the alleged conversation between Mr. Canary and Mr. -- or the person referred to as Karl as hearsay?

A It is hearsay.

Q Did you make any efforts to substantiate that statement before reporting it in your affidavit?

Mr. Broderick-Sokol. Are you asking about hearsay as a technical, legal, would it be admissible in court matter?

Ms. Lynch. No. What I'm asking is that she has just stated that the reason why she didn't report any of the subsequent conversations between her and Rob Riley to the

Alabama Bar or anybody else, despite being troubled by them, is because she characterizes them as hearsay. I'm now pursuing the fact --

The Witness. I cannot say whether they were true or not. These were just the statements made.

BY MS. LYNCH:

Q But could you say whether the conversation that you characterized in paragraph 16 of your affidavit is true or not?

A It is true as to what Bill Canary said on the telephone. And what I understood that I have testified to is truth as to what the man meant. As far as whether Karl Rove said this to Bill Canary or Bill Canary said that, I can't say, and I wouldn't attempt to say.

Q So you have no personal knowledge of whether Karl -- the person named Karl who you assumed to be Karl Rove -- ever made statements to Bill Canary as they are characterized in your affidavit?

A You said I have no personal knowledge. I know that Bill Canary said that.

Q No, ma'am --

A No, you said that. And I know that Bill Canary said it. So I do have personal knowledge, ma'am.

Q No. You have personal knowledge. Excuse me. And what I asked you was whether you had personal knowledge of

statements made by Karl Rove to Bill Canary. Do you have any personal knowledge of a statement made by Karl Rove to Bill Canary?

A I know what Bill Canary said on the phone.

Q That's fine. Other than what you say was said in the telephone conversation, do you have any personal knowledge of statements made by Karl Rove to Bill Canary?

A I know what Bill Canary said to those statements. I mean, that's an answer.

Mr. Broderick-Sokol. Are statements made --

The Witness. I mean, I can't say what Karl Rove and Bill Canary talked about.

Ms. Lynch. That is exactly what I'm getting at.

The Witness. I can only say what Bill Canary said that Karl Rove said.

Mr. Broderick-Sokol. Bill Canary could be lying, for example, when you heard them. You don't know about other things that happened outside your presence.

The Witness. I can only state what people said.

[Discussion off the record.]

BY MS. LYNCH:

Q I would like to just get back to what we were discussing a moment ago. Can you explain to me why, when you swore out this affidavit on May 21 of 2007, you included a description of a conversation from November 18 of 2002 but

did not include subsequent conversations that you have now described today that you claim were very troubling to you and that had relationship to the Siegelman-Scrushy prosecution. Can you explain that, please?

A I can explain that. I told them I did not want to do an affidavit against a Federal sitting judge. In Alabama we have some ethical rules that we are not supposed to talk badly about the court. So I told them I just would not sign an affidavit about that. They asked me to limit it solely to the day of November 18 and the phone call. And so --

Q Who asked you to do that?

A I'm not sure. I think John Aaron had talked to someone. You would have to talk to him. But John Aaron, I told him I would not do the affidavit on Judge Fuller because we had those ethical rules about talking badly about a judge, and I just wasn't going to do it. Even though I thought what he had done was right, I wasn't going to do it.

Q I'm sorry. So are you saying that the ethical rules of Alabama place the position of a Federal judge above reporting suspected collusion on the part of a Federal judge in a case, or possible misconduct by a Federal judge? I mean, I am just curious to know what the ethical rules require in Alabama.

A We are not supposed to disparage the court, and I was not going to participate in disparaging the court. And

I was not required by law. If they subpoenaed me, I would testify as to what the conversation was, and that's what I told them.

Q Aside from your concern about your ethical duty with regards to Judge Fuller, you have described today a conversation with Rob Riley where he, according to you, implies that Scrushy and Siegelman were intentionally prosecuted together to get Governor Siegelman. Why didn't -- that doesn't have anything to do with Judge Fuller, so why didn't you report that?

A Well, the thing is this, is Rob Riley told me that. I didn't know if that would really happen or not. I didn't know if that was truth or fiction.

Q And so --

A And I had -- after I watched it play out, I realized it was. But 'til I saw it, I didn't know if it was true. I didn't know Mark Fuller. So I didn't know if --

Q I'm going to object to that response, that there's a connection between that statement and the fact that they were tried together is proof of the statement. I mean that --

A I don't think you can object. I think this is a sworn statement. I don't mean to be ugly, but I've told you --

Q I'm sorry, but there was --

A This is not something you can object to, ma'am. This is a sworn statement we're taking.

Mr. Sandler. Just wait a minute.

Ms. Lynch. I just take issue with the speculation that the fact that Siegelman and Scrushy were later tried together is proof of the --

Mr. Sandler. I don't think she said that.

Mr. Broderick-Sokol. She believes it's true.

The Witness. After watching it happen, but I did not know.

Ms. Lynch. Could I ask the court reporter to read that back to us?

[The reporter read back the question.]

Ms. Lynch. So I'm not sure if I -- I'll just ask the question again since I interrupted the answer the last time.

BY MS. LYNCH:

Q Why did you not either report to the Bar or include in the affidavit the statement by Rob Riley that both Scrushy and Siegelman would be tried together -- I think as you said it -- because a lot of people disliked Mr. Scrushy, and this was a way to get Governor Siegelman? Can you explain why you didn't report it to the Bar or include it in the affidavit?

A Rob said that was the plan. I didn't know if that was true or not. But I -- and so I didn't report it. I

mean, you know, that's what he told me.

Q And why was that statement alone not enough to cause you -- you know, did that not cause you concern?

A He said that -- in that conversation, he said that he believed they were going to be able to prove that Mr. Scrushy illegally gave money -- just like I said when I answered his -- to Mr. Siegelman. That's why it didn't cause me to pause. I mean, if they could prove a criminal act, I had no reason to report it to the Bar. But I mean, it concerned me about Fuller, and I told Rob, I said in that conversation, and I said, You know, I don't think Fuller can hear that based on the facts he told me. He said, Oh, we'll see. And that was basically it.

Q Okay.

A I didn't know if there was anything ethical bad or not. If they're guilty?

Q So if -- strike that.

A This is not a strike, is it?

Mr. Sandler. Wait for questions.

BY MS. LYNCH:

Q I was striking me saying the word "if".

A Okay. That's what I was trying to figure out. I'm sorry. I was trying to figure out, is she striking something I said or not? Anyway.

Q Okay. I'm going to fast-forward a little bit to, I

guess, February of this year. We earlier admitted or marked Exhibit 6, which is a DVD videotape of the KKK rally.

A Yes.

Q And could you just remind me again, when did you receive that?

A A couple weeks ago. I can't say exactly how long ago, but I mean it has been within the last month.

Q Okay. So maybe let's just say sometime in mid- to late August or early September of 2007 is probably when you received it?

A That is correct.

Q And you have said that you received it from I guess what we'll just describe as like an anonymous source who is associated with the -- I'm sorry. Which police department is it again?

A Scottsboro.

Q Scottsboro Police Department.

In describing a telephone call with Mr. Art Leach, who I believe is one of Mr. Scrushy's attorneys, you said that you described to him the KKK rally and the telephone call of November 18 to him on the phone. And it was in that conversation where he asked you if there were other things that you knew about. And I believe what your answer was, was that you didn't feel comfortable telling him about anything to deal with Judge Fuller because you couldn't

document it, you couldn't corroborate it?

A I didn't tell him anything about Judge Fuller at all.

Q The reason why you did that is because you didn't feel comfortable doing it --

A I didn't know if it was truth. I didn't know Mark Fuller at all. I just knew what Rob had told me.

Q But you stated earlier what you did mention to Mr. Leach at that time was that there were videotapes of the rally, and you knew of those videotapes?

A I told Mr. Leach that I knew of pictures, and I may have mentioned -- I knew of pictures and who had pictures. And I probably told him that I saw video people that day -- as I recall I told him that -- but I did not know who they were.

Q So you -- while you were taking pictures at the rally, you saw people videotaping the rally?

A Right. But -- and I think I also told him that I thought that the Klan Watch people with Morris Dees videotapes all things, all Klan things. But I didn't know any video -- who the videotapers were.

Q You also mentioned -- I apologize if I'm jumping around. I'm just kind of going through my notes. But you said that you were reluctant -- you didn't want to do an affidavit.

A I didn't want to do an affidavit.

Q Right.

A And that's why I researched that judge so extensively.

Q Can you explain to me, I guess, why did you not want to do an affidavit but you felt comfortable doing extensive research on a Federal judge and putting a letter on -- writing a letter to, I guess, Mr. Leach on your letterhead about that judge?

A I -- well, that's a good question. But the thing is this, is here's where I'm at. I tell Joe Espy my story. Basically Joe Espy tells me I have an ethical duty, he thinks. I call the board to check out if I have an ethical duty. I talk to Art Leach, who basically wants me to do an affidavit. I knew the Bar had told me I had an ethical duty. I knew I knew those things on Judge Fuller. So I decided to tell Art Leach that. And my thinking at the time was that if I gave them all the facts, maybe they wouldn't include me. And when I met with them the first time -- because I met two times with Scrushy's bunch -- I said, Y'all go after the judge. Y'all don't have to have an affidavit from me. And that's what I did. And here's the stuff.

Q So your thinking at the time was that -- I don't want to misspeak for you, so please correct me if I'm wrong.

But you didn't want to have your name associated with the -- you know, the telephone call and what was later put in your affidavit. Is that what you were reluctant to do?

A I didn't want to get involved in this, but I had gotten involved. I had, unfortunately, stepped into it in the fall when I told Joe Espy about those pictures, and then when he asked me about those pictures further, and I didn't --

Q If you didn't want to be involved, why did you do rather extensive research on Judge Fuller?

A I realized after I talked to the Bar that if they were going to subpoena me one way or the other, and I knew that about the judge, and I thought that if they would take the information that I had about the judge-- let me answer -- I thought if they would take the information that I had on the judge and file something, I might not ever have to do an affidavit. So I gave them everything I knew on the judge.

Q So your thinking was that -- you were going to be subpoenaed by whom and for what case?

A In Mr. Scrushy's case, probably.

Q Because of the information that --

A On the telephone. But when I gave them the judge, they went after that full speed and left me alone 'til the judge didn't rule on their behalf. And then I realized I

was going to be back involved in it.

Mr. Bollinger went ahead and gave an affidavit, because I had told him 2-1/2 years ago. Mark had been the executive assistant to the Attorney General.

Q Okay, let's stop right there. I'll come back to Mr. Bollinger.

A Okay.

Q So I'm a little confused. I just want to clear this up. That you did the research on Judge Fuller and wrote a letter to Art Leach, who was Mr. -- one of Mr. Scrushy's attorneys, because you've -- I guess I'm confused on what -- for what reason you thought that Mr. -- or, excuse me, on what reason you thought you were going to be subpoenaed. You presumed you were going to be subpoenaed about the telephone call?

A Yes. From just things that had been said. And I wrote this -- if you read this letter, I wrote it as though -- I didn't tell them I had personal knowledge on it. I wrote it as though I didn't, because I didn't want them to say, Well, how do you know this? And I was real careful not to indicate any personal knowledge. And I thought if they got sidetracked on that, they'd leave me alone.

[Discussion off the record.]

BY MS. LYNCH:

Q So I guess I'm still -- I'm having a hard time

understanding --

A I've answered this half a dozen times. I can't make you understand. I don't mean to be ugly, but I can't.

Q With all due respect, let me just try one more time and then we'll move on. Okay. You have expressed an ongoing reluctance to put into an affidavit the telephone -- the telephone call of November 18, 2002. And you have said it's because you did not -- you just didn't want to be involved, and you didn't want your name associated with it. You didn't want to be involved in this at all, which I can appreciate. But I have to say I'm having a hard time correlating that to the fact that you then took it upon yourself to do research on a Federal judge and then, you know --

A I wanted them off me and I wanted them on him. I just wanted them off me. And it's like me telling you your dress is ugly, you know what I'm saying, when you're asking me a question I wouldn't necessarily want to answer. I just thought I would distract -- I would just give them the judge.

Q You were giving them something in exchange for maybe not doing the affidavit or to avoid having --

A No, ma'am. They did not ask me to do that. I just -- I mean, out of the blue, it's just like you saying -- you asking me a question I don't want to answer;

oh, by the way, your dress is ugly. I just distracted them from me when I sent that was my thinking at the time.

Q Okay.

A And I knew about those facts, I mean, but I was just trying to throw them off onto something else and get them to leave me alone.

Q Were you concerned at the time that drafting that letter might involve you in how they would use the letter? And just for the record, I'm referring to the letter --

A When I wrote the letter, I wrote it as general as possible without saying, This is what I know. You know -- I just wrote them, You need to -- you need to know the following facts.

Q That's fine. So I guess what I'm asking, you weren't concerned that you might somehow become involved in what they would do with this information?

A I was already concerned that I was involved and they weren't going to let go of me, you know what I'm saying? Because they -- the Bar had told me I had to report this.

Q In regards to this letter, which is Exhibit 7, dated February 15, 2007, to Art Leach, I believe you mentioned earlier that you asked Mr. Bollinger -- is it Mark, is that his first name?

A Yes.

Q You asked Mr. Bollinger to run some sort of

financial?

A An AutoTrack?

Q An AutoTrack. Mr. Bollinger is a client of yours?

A Uh-huh.

Q And you asked him to run a financial track on a Federal judge; is that correct?

A Yeah.

Q Okay. And --

A After --

Mr. Sandler. There's no question. Don't answer.

BY MS. LYNCH:

Q And you also said that Mr. Bollinger said to you that he was the person who, I guess, made the initial contact with Mr. Siegelman. Did you have a conversation with Mr. Bollinger -- he says, I'm going to call Mr. Siegelman?

A No. I told Mr. Bollinger about -- I wanted an AutoTrack. Mark Bollinger, after he ran the AutoTrack, talked -- I told him -- he asked me why I was running it. And he called Don Siegelman on his own accord, not at my recommendation.

Q I think you said earlier he told you he was going to call Mr. Siegelman. So were you aware that he was going to call him?

A No. Mark Bollinger called Don Siegelman and then

called me at my home, just like I told this gentleman down here. And the thing is that is when he called me at my home, he told me that Don Siegelman was going to be calling me, and I'm like, Why, you know, is he calling me?

Q Okay. So how well do you know Mr. Bollinger? Obviously he's a client of yours. But how long have you known him?

A Approximately 3, 3 1/2 years.

Q And is that the -- a length of time that you have represented him?

A Yes. I've known of him probably 15 years, because his uncle is an investigator, but known him 3, 3-1/2 years. You know what I'm saying. So of him is a different story.

[Discussion off the record.]

BY MS. LYNCH:

Q So you just stated that you've known Mr. Bollinger for about 3-1/2 years?

A Really known him, yes.

Q Really known him. Okay. And he is, I guess, the CEO of --

A Global Disaster Services.

Q Thank you. Global Disaster Services.

Have you ever been employed by Global Disaster Services?

A I do work for them.

Mr. Sandler. You said "employed" as opposed to being retained?

BY MS. LYNCH:

Q In something other than -- you said you have your own law practice and one of your clients is Global Disaster Services. But have you ever been on -- aside from being paid legal fees, have you ever been on the payroll of Global Disaster Services?

A I have never received a check from Global Disaster Services.

Q Okay.

A Wait. I take that back. He might have written one $1,000 check one time to my secretary. So -- but it wasn't to me. And he may have paid a copy cost. But to me as a fee, I have never received a fee check from Global Disaster Services.

Q And so you've known him for 3-1/2 years, and is that how long you've represented the company?

A No. I formed the company for him. I did the company for him on -- in August, I think, of 2005. I'm not certain the date. But I did -- I did a corporation for him, but I --

Q Okay. So you've known him a little bit longer than the corporation has been in existence.

A I do want to say on the record, in case anybody

reads this, Mark Bollinger has said I can talk about what we're here on. He gave me the right to send the paperwork that I sent y'all. So that anybody who reads that understands I'm not -- I'm not telling anything Mark didn't tell me would be okay.

Q So you mentioned that -- so Mr. Bollinger contacted former Governor Siegelman after having a conversation with you and running this financial track?

A Yes.

Q And then also later --

A And I was not happy that he did that.

Q And subsequent to that, you had a conversation again with Mr. Siegelman while he was at Mr. Bollinger's house?

A That is correct.

Q That's correct? Okay. So if you know, how would you characterize Mr. Bollinger's relationship with Mr. Siegelman? I mean, are they friends? Are they --

A I think they knew each other when Mark was in Montgomery. I never heard of Don Siegelman coming to Mark's house. But he showed up at some point in April or May or March wanting me to go to the Artur Davis deal.

Q That was of this year?

A That was of this year, and they called me.

Q What was -- you said the Artur Davis deal. Was that a meeting or a fundraiser or --

A I think it was some kind of -- I think that they were having some kind of fundraiser. But I don't know. I don't even know that Artur Davis was there. I just know that somebody was having a political thing and Artur Davis was mentioned of having been involved in whatever kind of deal, because they told me they were going to that fundraiser or event. And I don't know, I don't think Mark went. I think Siegelman did. But you'd have to ask him. I just -- Siegelman just showed up at his house or his office, and I think he showed up at his office. I think I told him that earlier. It was either his house or his office.

Q Okay. Let's see. Just a few more questions about -- on the affidavit and when you actually completed it on May 21, 2007.

You stated earlier that you ultimately did swear out the affidavit because you thought it was the right thing to do. Can you expand upon that? Why then, why suddenly May 21, 2007, did you think it was the right thing to do?

A I will tell you, I researched Fuller, you know, when Art Leach asked me, 'til the point of really looking up what Rob said about Fuller. I didn't know if that was true or not. Once I did the research on it, just as far as pulling those particular facts up, I realized we had a problem with a Federal judge, because I don't think our Federal judge should be --

Mr. Sandler. Wait a minute. Wait a minute. She asked about the affidavit.

BY MS. LYNCH:

Q I'm asking about the affidavit.

A I know. But this is part of it. I did not think that what he was doing was right, being a Federal judge and being in a closely held corporation for a Federal judge in government contracting was right. Additionally, I watched him when they sealed -- they filed -- Mr. Scrushy's team, when they filed the paperwork.

Mr. Sandler. When you say "paperwork," are you talking about the motion to recuse?

The Witness. The motion to recuse. He sealed the evidence, and I read the papers where he got out and spoke, but had them sealed where they couldn't speak, and the prosecutor spoke. And I just thought that this is not right, and I went ahead and I did the affidavit on the phone call. But I still would not do it on the judge because I was -- I knew that you're not really supposed to say disparaging remarks about judges. And I told them at the time, I will do this affidavit and if y'all subpoena me, I will answer the questions on the judge. And that's what I told them.

Q So you were prompted to swear out an affidavit about the phone call based upon --

A I wasn't prompted by anybody.

Q You were self-prompted. You yourself felt compelled to swear out the affidavit, finally --

A I felt that it was the right thing to do.

Q Can I please finish my question? Thank you very much.

You felt it was time to swear out the affidavit about the telephone call on May 21, 2007, because of the increasing -- it sounds like you were having increasing concerns about Judge Fuller on -- and I'm curious to know, at what point does this ethical rule that Alabama has about not speaking disparagingly about a judge become superseded by concerns you have about a judge? I mean, you've described several different conversations, or learned of several different things involving Judge Fuller --

A I don't understand your question because you've said so much. Give me a question, and I'll answer it.

Q All right. The first question is, I don't understand how concerns about Judge Fuller prompted an affidavit about the phone call. Can you explain that connection to me?

A Say that one more time?

Q That concerns about Judge Fuller and his role in this case, as I believe you said a few minutes ago, was what --

A Well, that --

Q That prompted you to ultimately do the affidavit?

A That is one part of it. Mark Bollinger also swore out an affidavit in addition, and he did it before I did it and telling what I had told him about this. And I knew that I was going to be in court anyway, and I'd rather get my whole story out as to exactly what had occurred, because I never have seen his affidavit. I don't know what he said at this point, still.

Q Okay.

A So --

Mr. Sandler. Hold on a second.

The Witness. It was the judge and Mark Bollinger doing the affidavit. It was both things.

BY MS. LYNCH:

Q That's fine. We'll just clarify that it was a combination of --

A It was a combination of things.

Q Mark Bollinger swearing out his own affidavit, okay, that ultimately prompted you to --

A I've never seen his affidavit. They say he's done one, but I don't even know if he has because I haven't seen it. But he told me he had done one for Don Siegelman, and I think that's why Don visited him.

Q That's fine. That's fine. And I'm sorry if I'm

repeating myself. I just want to clarify one last time, and then we'll move on, that you did not include any information about Judge Fuller in your affidavit because you felt that it would have been in conflict with ethical rules about how to deal with a judge. Is that a fair characterization?

A I did not want to put a judge -- if anybody was going to question me about a judge, they were going to have to subpoena me. That's how --

Q So you didn't want to put anything about Judge Fuller in writing?

A That's exactly right.

Q And you stated earlier that after the affidavit was completed, that Mark Bollinger met you at the attorney's office in Georgia?

A No, he did not meet me at the attorney's office.

Q Where did he meet you?

A I was in Trenton, which is where I did the affidavit. But I got done 30 minutes before -- 15 to 30 minutes before he did. And there's a town called Rising Fawn. He met me at Rising Fawn, Georgia. He came a different way than I'd come.

Q That's fine. That's fine. So did you -- I guess -- strike that.

Why was Mark Bollinger, I guess, the first person that you gave the affidavit to?

A Mark had told me he had done an affidavit for Don.

Q For Don --

A Siegelman.

Q Siegelman. Just wanted to make sure.

A And he said that -- and he had told me that. And so anyway, I called him up and just said, I'm going ahead and doing an affidavit if you've already done one. And I went ahead and did my affidavit. And anyway, I told him that -- I said, Since I'm doing my affidavit, I want y'all to pick it up in Georgia. And I mean -- and that's the case.

Q Did you have an -- did you have an idea of what would happen to it after Mark Bollinger picked it up? Did you know who he was going to give it to or where he was going to take it?

A I called Richard Scrushy because Mark told me on -- when I called Mark, Mark told me that he would come pick it up, but he wasn't taking it down to Birmingham. And I called Richard Scrushy's office, because I had left a message that I was going ahead and doing the affidavit that day before I left, and -- or had done it for John Aaron, I think, but I'm not sure. And anyway, the thing is this, is I talked -- ended up Richard answered, and I don't know, I think I called the cell phone that they pass around in that bunch -- but I ended up with Richard Scrushy and he said that he had -- he would get ahold of John Aaron, and John

Aaron would get it from Mark.

Q So your understanding is that Mark would give it to John?

A Aaron?

Q Aaron.

A I was trying to call John Aaron but somehow got Richard --

Q So your understanding is that you gave the affidavit to Mark Bollinger, who in turn would give it to John Aaron, who would then in turn give it to Richard Scrushy?

A And also to Don Siegelman.

Q And also to Don Siegelman. So is it your understanding that Mr. Aaron would deliver it both to Mr. Scrushy and Mr. Siegelman?

A Yes.

Q Okay.

A In fact, I -- sorry. It's tempting. But I mean, I know. Strike that "in fact," I guess.

Mr. Broderick-Sokol. We'll do the open mike session at the end.

Mr. Sandler. Exactly.

[Discussion off the record.]

BY MS. LYNCH:

Q Did you give a copy of your affidavit to members of the press?

A No.

Q Do you know how your affidavit ended up with members of the press?

A I have absolutely no idea. I think -- I know who I gave it to, but I mean as far as knowing how the press got it, I have no idea how they delivered it to them.

Q I know there have been some press reports that are focusing a lot of attention on the portion of your affidavit that refers to Karl. And I apologize, I don't have the news article in front of me. But I guess one -- strike that.

Let me ask it this way: Why did you ultimately swear out the affidavit? It's my understanding that there was concern -- your initial or your primary concern --

A I've already stated that and answered that like 10 times. I don't mean to be ugly but --

Q I'm going a different -- it may sound like I'm starting the same, but I'm going on a different track.

It's my understanding that you initially swore out the affidavit out of concerns about a possible conflict of interest on the part of Terry Butts?

A I did state that, but it disturbs me also about Terry Butts.

Q Okay. But so would it be -- is that the primary reason why you swore out that affidavit or is it just --

A That wasn't the sole reason.

Q Okay. So the information in the affidavit about a conversation with Karl and the Justice Department was also a reason for swearing out the affidavit?

A They asked me to do an affidavit on a particular date on a particular set of events that had happened. That's why I did -- I mean, I've told you the reasons already. But the thing is this, is that is the reason for the specifics of that affidavit is I detailed out what occurred in that phone call.

Q Okay. And just to clarify again, that they would be --

A Mr. Scrushy's legal team and then Don Siegelman asked me, you know, on that first phone call.

Q Okay, let's see. I guess just a couple more questions.

Aside from the telephone conversation that you outline in your affidavit on November 18, 2002, do you have any personal knowledge of communications between the White House or the Department of Justice and -- well, I'll start first with acting U.S. Attorney Louis Franklin.

A Do I have knowledge about Louis Franklin talking to the White House?

Q Uh-huh.

A No.

Q Okay, that's fine. I'm not looking for anything

more than that.

Do you have personal knowledge of any communications between the White House or Department of Justice and Assistant U.S. Attorney Steven Feaga. Let me spell that last name. F-E-A-G-A.

A No.

Q And do you have any personal knowledge of communications between the White House or Department of Justice, again specifically regarding the Siegelman-Scrushy prosecution with U.S. Attorney Leura Canary?

A Ask that question one more time so that I can hear that question.

Q Personal knowledge of communications between the White House or the Department of Justice regarding the Siegelman-Scrushy prosecution with U.S. Attorney Leura Canary?

A I know that Rob told me in that conversation --

Ms. Duncan. Personal knowledge.

Mr. Sandler. Personal knowledge.

The Witness. No.

BY MS. LYNCH:

Q And I would ask the same question, too, of personal knowledge of conversations between the White House or the Justice Department and Governor Riley.

A All I know is what Rob told me. So, no.

Mr. Broderick-Sokol. Limited to the Siegelman-Scrushy --

BY MS. LYNCH:

Q For the Siegelman-Scrushy prosecution.

A I just know Rob told me. But as far as if that counts as personal knowledge -- but I did not hear a conversation of Bob Riley talking, Bob Riley talking. Bob Riley did not tell me that.

Q Well, I think that's it for me.

Mr. Broderick-Sokol. I have no redress. Do you have anything?

Mr. Sandler. You said Ms. Simpson, as the Chairman said, will have an opportunity to review the transcript before it's released to the members of the committee, I guess, for purposes of the investigation?

Mr. Broderick-Sokol. I think that would be released outside the committee,

Mr. Sandler. Okay.

Mr. Broderick-Sokol. I don't think we can agree to keep it from members of the committee.

Ms. Lynch. We can't keep it from members while you edit it.

Mr. Broderick-Sokol. And we can -- and really that will depend -- getting the corrected version, that will depend on how quickly you guys get it back with those

corrections.

The Witness. Like I said, I flip-flopped. And it might not be bad to go ahead and state for the record I flip-flopped at Perry Hooper from what my lawyer tells me was a Democrat. I was nervous at the start. He's not a Democrat.

Mr. Broderick-Sokol. It's down now. You can send that page.

[Whereupon, at 4:30 p.m., the committee was adjourned.]

JOHN CONYERS, JR., Michigan
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ONE HUNDRED TENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

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(202) 225-3951
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September 6, 2007

By Facsimile

Priscilla Duncan, Esq.
472 South Lawrence, Suite 204
Montgomery, AL 36104

Dear Ms. Duncan:

This letter follows up on discussions you have had with my staff regarding Ms. Jill Simpson's agreement to be interviewed on topics related to the criminal prosecution of former Alabama Governor Don Siegelman.

As you have discussed with my staff, the interview will take place at 12:30 pm on Friday, September 14, 2007, and will be conducted in the Judiciary Committee office at 2138 Rayburn House Office Building. It will be transcribed, and will be taken under oath. Questions will be asked of Ms. Simpson by only two people – a member of the Committee majority staff and a member of the Committee minority staff – although additional members of the Committee staff will likely be present.

Ms. Simpson will have an opportunity to review and correct her interview transcript before it is released, and will receive a copy of the transcript when it is final. In addition, the transcript will be kept confidential and will not be disclosed except pursuant to the Chairman's decision after consultation with Ranking Member Smith and with you. My staff has discussed these terms and conditions with Ranking Member Smith's staff, and we understand that Mr. Smith will write you agreeing to these terms as well.

I hope this description is useful to you and Ms. Simpson in advance of next week's interview. If you have any questions, please do not hesitate to contact my office or Sam Sokol (202-225-2129) of the Committee staff. And thank you once again for your and Ms. Simpson's cooperation in this matter.

Sincerely,

John Conyers, Jr.

John Conyers, Jr.
Chairman

cc: Hon Lamar S. Smith

EXHIBIT
1
PENGAD 800-631-6989

Sokol, Sam

From: Jezierski, Crystal
Sent: Wednesday, September 12, 2007 2:26 PM
To: 'helzphar@mindspring.com'
Cc: Sokol, Sam
Subject: Re: September 14, 2007, Interview of Jill Simpson

It was not communicated to us by you or the majority that Ms. Simpson had already agreed to a total of 3 individuals each that would be present for the majority and the minority.

We will participate then with a total of three persons being present at any one time.
Crystal Roberts Jezierski
202 226 8684 direct
703 899 0355 cell
Crystal.Jezierski@mail.house.gov

-----Original Message-----
From: Priscilla Duncan <helzphar@mindspring.com>
To: Jezierski, Crystal
Sent: Wed Sep 12 13:17:11 2007
Subject: RE: September 14, 2007, Interview of Jill Simpson

The majority already has agreed, and these were the terms under which Miss Simpson agreed to do the interview.

----- Original Message -----
From: Jezierski, Crystal <mailto:Crystal.Jezierski@mail.house.gov>
To: helzphar@mindspring.com
Cc: Sokol, Sam <mailto:sam.sokol@mail.house.gov>
Sent: 9/12/2007 8:30:36 AM
Subject: RE: September 14, 2007, Interview of Jill Simpson

Ms. Duncan - I can understand her concerns. As a practical matter, the interview process really is quite controlled among staff. All those who are in the room are the staff that are assigned to work on these issues for the Committee and for the Committee's members. We, the minority on the Committee, would have some concerns about not allowing appropriate staff for our subcommittee ranking members to be able to participate as observers because they must be in a position to be able to consult with the member they work for on the matters we are investigating. I am not suggesting that there not be a limit, but perhaps a higher number of 4 or 5 individuals.

From: Priscilla Duncan [mailto:helzphar@mindspring.com]
Sent: Tuesday, September 11, 2007 6:12 PM
To: Jezierski, Crystal
Cc: Sokol, Sam
Subject: Re: September 14, 2007, Interview of Jill Simpson

Miss Simpson objects to any more than three persons from either staff being present, as she agreed initially. She is concerned that the place will be flooded with people passing notes to the questioner and it becoming a distraction. I am sending this objection to the majority as well. Priscilla Duncan.

EXHIBIT
2
FEDQ 800-451-6989

----- Original Message ----- From: Jezierski, Crystal <mailto:Crystal.Jezierski@mail.house.gov>

To: helzphar@mindspring.com

Sent: 9/11/2007 3:52:05 PM

Subject: Re: September 14, 2007, Interview of Jill Simpson

Ms. Duncan,

Per our telephone conversation of 2:30 this afternoon, the purpose of this email is to confirm for you that staff for the Minority Members of the Committee on the Judiciary of the U.S. House of Representatives will participate in an interview of your client, Ms. Jill Simpson, on Friday, September 14, 2007, at 12:30 p.m. in Washington, D.C. at the Committee's offices, 2138 Rayburn House Office Building. This email is also to confirm that all staff agree to the terms stated in correspondence from Chairman Conyers to you, transmitted to you on September 6, 2007. (A copy of that letter is attached.)

As stated in the September 6, 2007, letter Ms. Simpson will be interviewed by Committee staff and the interview will be transcribed and under oath. We agree that questions will be asked by two persons, one on behalf of the Majority Members and one on behalf of the Minority Members. However, as Chairman Conyers' letter states additional members of the Committee's staff will likely be present. As I informed you on the telephone we anticipate that Caroline Lynch, Counsel for the Minority Staff of the Crime Subcommittee, will question Ms. Simpson on behalf of our members. We also anticipate that Daniel Flores, Chief Counsel for the Minority Staff of the Subcommittee on Commercial and Administrative Law, and I will be present for the interview. It is possible that additional staff representing the Committee Members, other than the above named, will also be present.

We also understand that Ms. Simpson will have an opportunity to review and correct her interview transcript before it is released, that she will receive a copy of the transcript when it is final, and that the transcript will be kept confidential and will not be disclosed except pursuant to the Chairman's decision after consultation with Ranking Member Smith and you.

Please do not hesitate to call me if you have any questions.

<<090607 to p duncan re jill simpson.pdf>>

Sincerely,

Crystal Jezierski

Crystal Roberts Jezierski

Chief Counsel for Oversight and Investigations

Committee on the Judiciary

Minority Staff

Representative Lamar Smith, Ranking Member

U.S. House of Representatives

B-351 Rayburn House Office Building

Washington, D.C.

(202) 226-8684 direct

(703) 899-0355 cell

Crystal.Jezierski@mail.house.gov

STATE OF GEORGIA)
)
COUNTY OF DADE)

AFFIDAVIT

Jill Simpson, being duly sworn, deposes and says:

1. I am over the age of eighteen and of sound mind;

2. I have personal knowledge of the facts herein;

3. During the 2002 Alabama's Gubernatorial campaign I assisted the Bob Riley Campaign when they requested help on matters in Northeast Alabama;

4. On November 5, 2002, the election for Alabama's Governor was held and Bob Riley was declared the winner;

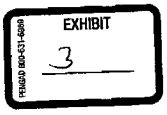
5. Bob Riley won by approximately 3,120 votes;

6. Don Siegelman contested the results of the election and refused to concede;

7. On or about the week after the election, I was asked to find out why Bob Riley's campaign signs were disappearing in Northeast Alabama;

8. I found out a Jackson County attorney was putting the Bob Riley signs up in an area where a Ku Klux Klan rally was to take place in Jackson County, Alabama on November 16, 2002;

9. As proof that this was a trick by this attorney, who I believed to be a Democrat, I took pictures on a disposal camera of this attorney putting up the signs;



SIMPSON 1

10. On Monday after taking the pictures I had a case in Jackson County and had a chance to encounter the attorney that I had seen putting up the signs. At this encounter he was showing pictures that he had taken of the signs to other attorneys there in the court house and I asked to see them. He allowed me to see the pictures and when I asked he gave me a couple of the photos and told me that these pictures were on a web site. The attorney was trying to suggest the Klan had a rally and the Klan was supporting Bob Riley, and after getting the pictures I left the courthouse and I placed a call to Rob Riley, Bob Riley's son, on my cell phone and informed him of the pictures and the information regarding the missing campaign signs and the web site. After I spoke with Rob he told me they had been getting calls about the internet site and were trying to determine where the pictures had come from;

11. Throughout the day of Monday, November 18 there were multiple calls to me from Rob Riley and other people about the pictures I had taken and the trick this attorney who I believe to be a Democrat was trying to pull;

12. I, Rob Riley, William "Bill" Canary and Terry Butts were participants in one of the calls;

13. During the call Rob Riley was upset about the pictures and internet trick and wanted to go to the press but was told by Terry Butts that he would confront Siegelman regarding the signs and get him to withdraw his contest of the election and he believed that Don Siegelman would concede by the ten o'clock news when confronted with these pictures and the internet so as to avoid any embarrassment to Don Siegelman. Terry claimed that he would be able to assure Don that this would all be over if he would concede;

14. Rob Riley asked about Siegelman being a problem in the future if they did not go to the press, but he was told by William "Bill" Canary not to worry about Don Siegelman that "his girls would take care of him" and at this time the election contest needed to be put behind them to let Terry talk to Don and get him to concede;

15. William "Bill" Canary identified "his girls" as Leura Canary, his wife, and Alice Martin, the U.S. Attorney for the Middle and Northern District's of Alabama;

16. Rob Riley then asked if he was sure these "girls" could take care of Don Siegelman and William "Bill" Canary told him not to worry that he had already gotten it worked out with Karl and Karl had spoken with the Department of Justice and the Department of Justice was already pursuing Don Siegelman;

17. Arrangements were made with me for me to meet a campaign worker of Bob Riley's to give the photos that I had received from the attorney in Jackson County and to give the disposal camera since I had not developed the pictures I had taken. I gave the photos and the disposal camera to the campaign worker.

18. Late that afternoon of November 18, 2002, I was called by Rob Riley and told Terry Butts had talked with Don Siegelman and that Don Siegelman would be resigning before the ten o'clock news;

19. Don Siegelman gave up his contest of the Alabama Governor's Election the night of November 18, 2002.

20. I did not realize until this past fall when I was having a conversation with Joe Espy that Don had never told his attorney why he conceded on November 18, 2002.

21. In February 2007, after I talked to the Alabama Bar, I called Richard Scrushy's attorney, Art Leach, and told him why I believed Don Siegelman had conceded and Mr. Butts' role in getting Mr. Siegelman to concede.

22. The reason I did this is because I believe everyone has a sixth amendment right to have an attorney who does not have a conflict and I believed that Mr. Butts did.

FURTHER AFFIANT SAITH NOT.

Jill Simpson

Sworn to and subscribed before me, this the _____ day of _____, 2007.

Notary Public My Commission expires: _____

37574 B

FARMERS WIRELESS

Page 2

FOR BILLING INQUIRIES CALL 1(256)899-9000
DANA JILL SIMPSON
(256)899-3600 10007203 B 1
BILLING DATE 12/15/2002

FARMERS WIRELESS DETAIL OF ITEMIZED CALLS

DATE	CONT	TC	TO PLACE AND NUMBER			MIN	AIR	LD	AMOUNT
CROSS-BILLED FROM 256-899-3601									
11-16	1:08pm	WL AT	RAINSVILLE	AL	256 717 9131	1.0			.00
11-19	8:30am	WL AT	RAINSVILLE	AL	256 638 4894	1.0			.00
11-19	12:33pm	WL AT	RAINSVILLE	AL	256 638 3816	1.0			.00
11-21	8:41am	WL AT	RAINSVILLE	AL	256 638 4894	2.0			.00
11-21	1:09pm	WL AT	DIR ASST	AL	256 411 0000	3.0		0.75	.75
11-21	1:12pm	WL AT	SCOTTSBORO	AL	256 259 2262	1.0			.00
11-21	1:24pm	WL AT	DIR ASST	AL	256 411 0000	1.0		0.75	.75
11-21	1:26pm	WL AT	DIR ASST	AL	256 411 0000	2.0		0.75	.75
11-21	1:27pm	WL AT	SCOTTSBORO	AL	256 259 5211	2.0			.00
11-21	6:31pm	LW AT	INCOMING	CL	256 899 3601	5.0			.00
11-25	6:55pm	WL AT	FORT PAYNE	AL	256 845 8841	1.0			.00
11-25	6:56pm	WL AT	FORT PAYNE	AL	256 996 2540	1.0			.00
11-26	7:46am	WL AT	RAINSVILLE	AL	256 638 5556	1.0			.00
12-04	10:17am	WL AT	FORT PAYNE	AL	256 996 5844	2.0			.00
12-04	10:18am	WL AT	POLOV	AL	251 579 3623	3.0			.00
12-04	10:29am	WL AT	FORT PAYNE	AL	256 996 5837	2.0			.00
12-05	9:54am	WL AT	RAINSVILLE	AL	256 638 4894	1.0			.00
12-05	1:27pm	WL AT	RAINSVILLE	AL	256 638 4894	1.0			.00
12-05	1:32pm	WL AT	ARAB	AL	256 317 7902	1.0			.00
12-05	1:32pm	LW AT	INCOMING	CL	256 899 3601	2.0			.00
12-05	1:36pm	WL AT	RAINSVILLE	AL	256 638 4894	1.0			.00
12-05	5:27pm	WL AT	RAINSVILLE	AL	256 638 4894	1.0			.00
12-05	5:28pm	WL AT	RAINSVILLE	AL	256 638 2908	1.0			.00
12-05	6:51pm	WL AT	RAINSVILLE	AL	256 638 2908	1.0			.00
12-07	1:00pm	WL AT	ARAB	AL	256 317 7902	3.0			.00
12-10	8:41am	WL AT	RAINSVILLE	AL	256 638 4894	5.0			.00
12-11	2:11pm	WL AT	RAINSVILLE	AL	256 638 4894	1.0			.00
12-11	2:34pm	WL AT	RAINSVILLE	AL	256 717 9131	6.0			.00
12-12	12:37pm	WL AT	RAINSVILLE	AL	256 638 4894	2.0			.00
12-12	7:31pm	WL AT	BIRMINGHAM	AL	205 254 6956	7.0			.00
12-13	7:52am	WL AT	RAINSVILLE	AL	256 638 4894	1.0			.00
			256-899-3601 31 CALLS FOR 69.0 MINUTES =						2.25
CALLING AREA BIRMINGHAM FOR 256-899-3601									
11-17	1:01pm	WL AT	BIRMINGHAM	AL	205 836 5424	1.0			.00
12-06	6:34pm	WL AT	ARAB	AL	256 317 7902	4.0			.00
12-06	6:51pm	WL AT	RAINSVILLE	AL	256 638 2908	8.0			.00
			3 MESSAGES FOR 13.0 MINUTES =						.00
CALLING AREA HUNTSVILLE FOR 256-899-3601									
11-19	1:07pm	WL AT	RAINSVILLE	AL	256 638 4894	6.0			.00
11-19	2:02pm	WL AT	FORT PAYNE	AL	256 845 2250	9.0			.00
			2 MESSAGES FOR 15.0 MINUTES =						.00
CALLING AREA GUNTERSVIL FOR 256-899-3601									
11-19	1:56pm	WL AT	RAINSVILLE	AL	256 638 4131	2.0			.00
			1 MESSAGE FOR 2.0 MINUTES =						.00
CALLING AREA SCOTTSBORO FOR 256-899-3601									
11-16	10:52am	WL AT	BIRMINGHAM	AL	205 870 9866	11.0			.00
			1 MESSAGE FOR 11.0 MINUTES =						.00
			SUBTOTAL FOR 899-3601						2.25

EXHIBIT 4

SIMPSON 490

Farmers Telephone Cooperative, Inc.

Page 1

BILLING INQUIRIES CALL (256)638-2144
SIMPSON JILL ATTORNEY
(256)638-4894 32990 D 26 NP
BILLING DATE 12/01/2002

INDICATOR LEGEND

TC	TYPE OF CALL	TC	TYPE OF CALL
DD	DIRECT DIAL - DAY RATE		
FT	FLD Enhanced Plan		

FARMERS LD, INC. CHARGES AND CREDITS

12-01	FLD ENHANCED PLAN		4.95
	TAX- FEDERAL EXCISE TAX	.15	
	ALABAMA STATE TAX	.30	.45
	FARMERS LD, INC. CHARGES & CREDITS		5.40

FARMERS LD, INC. DETAIL OF ITEMIZED CALLS

DATE	CONT	TC		TO PLACE AND NUMBER			MIN	AMOUNT
10-21	10:48am	DD	FT	ARAB	AL	256 317 7902	1.0	.09
10-21	1:58pm	DD	FT	HUNTSVILLE	AL	256 512 9924	1.0	.09
10-21	2:06pm	DD	FT	SCOTTSBORO	AL	256 259 3663	3.0	.27
10-21	3:39pm	DD	FT	BRIDGEPORT	AL	256 495 9105	2.0	.18
10-21	3:48pm	DD	FT	SCOTTSBORO	AL	256 259 6899	3.0	.27
10-21	5:28pm	DD	FT	HUNTSVILLE	AL	256 533 7711	1.0	.09
10-22	12:00pm	DD	FT	TUSCALOOSA	AL	205 345 6789	2.0	.18
10-22	1:35pm	DD	FT	BIRMINGHAM	AL	205 870 9866	1.0	.09
10-22	4:46pm	DD	FT	ARAB	AL	256 317 7902	1.0	.09
10-23	2:40pm	DD	FT	ARAB	AL	256 317 7902	1.0	.09
10-24	10:47am	DD	FT	ARAB	AL	256 317 7902	1.0	.09
10-24	10:49am	DD	FT	HUNTSVILLE	AL	256 512 9924	7.0	.63
10-24	11:09am	DD	FT	FOLEY	AL	251 943 2645	2.0	.18
10-24	5:00pm	DD	FT	HUNTSVILLE	AL	256 512 9924	3.0	.27
10-25	11:49am	DD	FT	GRANT	AL	256 728 2336	1.0	.09
10-25	12:25pm	DD	FT	ARAB	AL	256 317 7902	2.0	.18
10-25	4:13pm	DD	FT	DECATUR	AL	256 353 2817	1.0	.09
10-26	7:40pm	DD	FT	ARAB	AL	256 317 7918	1.0	.09
10-28	8:52am	DD	FT	HUNTSVILLE	AL	256 539 0623	1.0	.09
10-28	12:01pm	DD	FT	BRIDGEPORT	AL	256 495 3507	1.0	.09
10-30	11:14am	DD	FT	NASHVILLE	TN	615 650 8621	5.0	.45
10-30	3:02pm	DD	FT	SCOTTSBORO	AL	256 574 3017	1.0	.09
10-31	4:21pm	DD	FT	SCOTTSBORO	AL	256 574 3017	3.0	.27
11-04	12:06pm	DD	FT	SCOTTSBORO	AL	256 574 9240	1.0	.09
11-04	2:51pm	DD	FT	BIRMINGHAM	AL	205 254 6956	1.0	.09
11-04	4:12pm	DD	FT	SCOTTSBORO	AL	256 259 6851	1.0	.09
11-05	2:02pm	DD	FT	VISTA	CA	760 639 3540	3.0	.27
11-06	2:19pm	DD	FT	DECATUR	AL	256 351 4642	6.0	.54
11-08	2:00pm	DD	FT	ARAB	AL	256 317 7902	11.0	.99
11-08	2:19pm	DD	FT	SECTION	AL	256 228 7280	2.0	.18
11-08	3:09pm	DD	FT	BIRMINGHAM	AL	205 298 1800	2.0	.18
11-08	3:12pm	DD	FT	BIRMINGHAM	AL	205 317 7902	1.0	.09
11-11	3:57pm	DD	FT	BIRMINGHAM	AL	205 254 6956	1.0	.09
11-11	4:00pm	DD	FT	ARAB	AL	256 317 7902	1.0	.09
11-11	4:41pm	DD	FT	SCOTTSBORO	AL	256 574 1428	2.0	.18
11-13	9:26am	DD	FT	SCOTTSBORO	AL	256 574 9345	1.0	.09
11-13	10:36am	DD	FT	BIRMINGHAM	AL	205 870 9866	7.0	.63
11-13	2:51pm	DD	FT	BIRMINGHAM	AL	205 836 5424	1.0	.09
11-13	2:54pm	DD	FT	BIRMINGHAM	AL	205 870 9866	4.0	.36
11-14	12:11pm	DD	FT	BIRMINGHAM	AL	205 944 8316	1.0	.09
11-14	1:25pm	DD	FT	BIRMINGHAM	AL	205 879 5000	6.0	.54
11-14	1:36pm	DD	FT	BIRMINGHAM	AL	205 427 8434	2.0	.18
11-15	11:47am	DD	FT	BIRMINGHAM	AL	205 879 5000	5.0	.45
11-15	12:19pm	DD	FT	BIRMINGHAM	AL	205 824 3117	7.0	.63
11-15	1:21pm	DD	FT	SCOTTSBORO	AL	256 575 2825	2.0	.18
11-18	1:57pm	DD	FT	BRIDGEPORT	AL	256 495 3585	17.0	1.53
11-18	2:17pm	DD	FT	HUNTSVILLE	AL	256 517 8646	3.0	.27
11-18	2:23pm	DD	FT	BIRMINGHAM	AL	205 944 8316	21.0	1.89
11-18	3:19pm	DD	FT	BIRMINGHAM	AL	205 254 6956	40.0	3.60
11-19	10:14am	DD	FT	BIRMINGHAM	AL	205 879 5000	3.0	.27

50 MESSAGE(S) FOR 197.0 MINUTE(S)

LAW OFFICES
OF
ROBERT R. RILEY, JR.
1806 OXMOOR ROAD
BIRMINGHAM, ALABAMA 35209

ROBERT R. RILEY, JR.
FOSTER F. MARSHALL

TELEPHONE (205) 870-9866
FAX (205) 877-9272

June 11, 1998

Ms. Jill Simpson, Esq.
Post Office Box 341
Rainsville, Alabama 35986

RE: [redacted]

Dear Jill:

I spoke with [redacted] regarding a potential medical malpractice case. She explained to me that her damages were that she lost eight weeks of sick leave and was in pain for eight weeks. However, it appears that this would be the only damage she would have. As such, I told her that I simply could not bring such a lawsuit for that type of damage. I assured her that I was not stating whether it was malpractice or not, and did not blame her for being upset, but I could not justify bringing that case.

Very truly yours,

Rob Riley

Robert R. Riley, Jr.

RRRjr/ded

EXHIBIT
5

SIMPSON 558

LAW OFFICES
OF
ROBERT R. RILEY, JR.
1806 OXMOOR ROAD
BIRMINGHAM, ALABAMA 35209

TELEPHONE: (205) 870-9866
FAX: (205) 877-9272

ROBERT R. RILEY, JR.
KEITH JACKSON*
*also licensed to practice in Georgia

September 8, 1999

Jill Simpson, Esq.
Attn: Marie
Post Office Box 341
Rainsville, Alabama 35986

Re: [redacted]

Dear Marie:

Please have [redacted] sign the enclosed Release and Distribution Sheet and return it to me.

Very truly yours,

Robert R. Riley, Jr.

RRRjr/trh

Enclosure

LAW OFFICES
OF
ROBERT R. RILEY, JR.
1806 OXMOOR ROAD
BIRMINGHAM, ALABAMA 35209

ROBERT R. RILEY, JR.
KEITH JACKSON*
*also licensed to practice in Georgia

TELEPHONE: (205) 870-9866
FAX: (205) 877-9272

September 23, 1999

Jill Simpson, Esq.
Attn: Marie
Post Office Box 341
Rainsville, Alabama 35986

Re: [redacted]

Dear Marie:

Please find enclosed a check in the amount of Seven Thousand Nine Hundred Sixty Eight and 23/100 Dollars ($7,968.23) for the referral of [redacted]

Thank you for referring her to me.

Very truly yours,

Robert R. Riley, Jr.

RRRjr/trh

Enclosure

LAW OFFICES
OF
ROBERT R. RILEY, JR.
1806 OXMOOR ROAD
BIRMINGHAM, ALABAMA 35209

TELEPHONE: (205) 870-9866
FAX: (205) 877-9272

ROBERT R. RILEY, JR.
KEITH JACKSON*
*also licensed to practice in Georgia

April 6, 2000

[redacted]
Scottsboro, Alabama 35768

[redacted]

Dear [redacted]

Please call me when you have an opportunity. The Defendants have now offered you $23,000.00 to settle your case. This is up from their last offer of $14,000.00. I believe they will likely pay $25,000.00 but I do not believe they will pay anymore. I look forward to hearing from you.

Very truly yours,

Robert R. Riley, Jr.

RRRjr/trh

cc: Jill Simpson, Esq.

FROM :RILEY & JACKSON, P.C. FAX NO. :205-877-9272, Sep. 14 2001 04:44PM P1

RILEY & JACKSON, P.C.
ATTORNEYS AT LAW

ROBERT R. RILEY, JR.
*KEITH JACKSON
*ALSO LICENSED TO PRACTICE IN GA

September 14, 2001

Via Facsimile No.: (256) 845-4696

Mr. Stephen Bussman
212 Alabama Avenue South
Post Office Box 660925
Fort Payne, Alabama 35967

Dear Stephen:

[redacted] and I agreed when Jill and I met with him in Jill's office that he would pay me $250/per hour for my time negotiating with his creditors, reviewing his appeal, and any other work on this matter. Please list me as a creditor on his bankruptcy petition if he files for a bankruptcy and we do not have a contingency agreement with him. I have 14.5 hours in this matter, or $3625.00 in fees. I am attaching along with this letter a breakdown of the work that has been performed from August 31, 2001 through September 12, 2001. I hope to see you soon,

Very truly yours,
RILEY & JACKSON, P.C.

Robert R. Riley, Jr.

RRRjr/tb

cc: Jill Simpson, Esq. (Via Facsimile)

1806 OXMOOR ROAD BIRMINGHAM, ALABAMA 35209 (205) 870-9866 FAX (205) 877-9272

RILEY & JACKSON, P.C.
ATTORNEYS AT LAW

ROBERT R. RILEY, JR.
*KEITH JACKSON
*ALSO LICENSED TO PRACTICE IN GA

OF COUNSEL:
FRANCOIS M. BLAUDEAU
MD, FCLM

October 29, 2001

[redacted]
Section, Alabama 35771

Dear [redacted]

I believe things are developing well in our attempts to help you recovery the amount you are owed as a result of your work on the [redacted] project. However, it is very inporant that I receive the breakdown of your costs as soon as possible. I am hoping to go to Washington, DC soon to discuss this matter with several individuals. However, I must have this information before I leave.

Very truly yours,
RILEY & JACKSON, P.C.

Robert R. Riley, Jr.

RRRjr/tb

cc: Jill Simpson, Esq.
Steve Bussman

1806 OXMOOR ROAD BIRMINGHAM, ALABAMA 35209 (205) 870-9866 FAX (205) 877-9272

RILEY & JACKS , P.C.
1744 Oxmoor Road
Birmingham, AL 35209
Tel: 205-879-5000
Fax: 205-879-5901

Date: May 2, 2002

To: Jill Simpson, Esq.

Fax No.: (256) 638-4895

rom: Robert R. Riley, Jr.

Subject:

Number of Pages Including Cover Page:

Comm. :

CONFIDENTIALITY NOTICE

This facsimile transmission (and/or the documents accompanying it) may contain confidential information be . to the sender which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action based on the contents of this faxed information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of the documents.

May 1, 2002

Dear Kar

I am attaching a copy of the statement that [redacted] made before the City Council on April 2, 2001. I have highlighted and underlined the areas that I think you would be most interested in using.

Also, I read the depositions that your office sent to me yesterday. There was very little I found that we could use. However, [redacted] states on Page 34 of his first deposition that it was the City's decision not to grind and burn. At the beginning of [redacted] second deposition he speaks to how the City chose [redacted] over [redacted] and the fact that initially the City wanted to use [redacted] (who was the lowest bidder per cubic yard) but [redacted] said that since [redacted] had not previously done this type of work, he did not think that Mr. Cannon should be awarded the contract. (Page 6-7).

[redacted] does go on to say that they initially recommended [redacted] for the work but then decided instead to use DMC.

Most of the other depositions address the issue as to how they decided to use [redacted] as well, but none of the depositions set forth our case as well as what the Mayor says in his Statement to the City Council in my opinion.

Also, do we have any evidence of other contracts that would be similar to [redacted] other cities where similar amounts have been paid. It is my recollection that [redacted] had mentioned to me once before that other companies were paid similar amounts for similar work

I am also sending the [redacted] meeting video to you by federal express.

May 2, 2002

I think your letter is very good. Here are some additional thoughts that I have:

1) Attach a copy of the transcribed conversation between [redacted] and [redacted] in which [redacted] tells [redacted] that he is aware that [redacted] does not have the lowest bid contract and furthermore approves the right for the City to enter into that contract. Also, [redacted] states in the conversation that he has "ran it by the IG," and they didn't have a problem with it. [redacted] specifically states in the conversation "we're not going to come after you for not taking the lower bid." I think this would be a great exhibit to the letter.

2) Add a copy of the transcript from [redacted] videotaped statement that he made before the City Council on April 2, 2001. Also, I sent by FedEx a copy of the videotape to you yesterday.

3) On the last paragraph under question #1, you may want to add that the subcontractor claims that have been filed exceed two million dollars. Also, I would delete the reference to the recent depositions taken in litigation since there [illegible] that helps us and some of the testimony would hurt us. For instance, [redacted] [illegible]fying in his deposition that he did not believe [redacted] should be paid any addit[illegible] money.

4) I think it would also be good to highlight again that [redacted] has been a respected business for 25 years and it is only because of this recent denial by FEMA that they have had to enter into bankruptcy.

5) In the last paragraph under question #4, you may want to consider adding the fact that there were estimates that there was as many as one million stumps.

6) Under question #5, you may want to highlight that the City originally wanted to use [redacted] who was the lowest bidder, but FEMA encouraged the City to not use [redacted] based on his inexperience in these types of disasters. Also, you may want to highlight again the fact that [redacted] was the only contractor willing to give a substantial amount of work to minority contractors.

7) [redacted] states that FEMA informed him that they would not pay the full amo[illegible]nt due to the fact that he did not use the lowest bid. If this is the case, then FEMA should clearly lose on this position since they agreed in a tape recorded conversation that [redacted] did not have to take the lowest bid. If, as I understand it, their primary argument now is that [redacted] should not be paid because the burning and grinding was not done which would have decreased the amount of material that would be hauled outside the city, then I think you should reference in your letter the section in your

appeal that addresses this issue on page 21 that deals with this issue.

8) You may also want to consider adding the fact the City did pay an additional $[illegible] on approximately 26,000 cubic yards further underlining that the City understood th[illegible] was the amount they agreed to pay.

9) [redacted] ask me to remind you that getting [redacted] to agree to receive $2.00/cubic yard was a great deal for FEMA since other landfills were charging $8.00 - $10.00/cubic yard.

FROM :RILEY & JACKSON, P.C. FAX NO. :2059795901 May. 23 2002 12:11PM P1

To: Bill I e-mailed this to [redacted], Karl, and Stewart today RJ

Rob Riley

To: dmcmikemitcell@aol.com

I have been talking with Robbie from Hutchinson's office. He has offered to try to get the Senator to send this letter. Below are some changes that he has made to a draft letter I sent to him. He believes that the Senator will approve the letter and send it out today or tomorrow. I asked him to copy it to Shelby, Sessions and Aderholt. Stewart, if the Alabama gang gets a copy of this letter, do you think we can get another letter from them to Allbaugh responding to Hutchinson's letter? I sent Robbie copies of the documents referenced below so he feels comfortable sending the letter.

May 23, 2002

Mr. Joe Allbaugh
Director
Federal Emergency Management Agency
500 C Street, Southwest
Washington, D.C. 20472

Dear Mr. Allbaugh:

As you are aware, the [redacted] has submitted an appeal to have the contract they entered into with [redacted] funded at the contract rate it agreed to pay [redacted] for work done in 2001. It is my hope that you will direct those overseeing this appeal within the Federal Emergency Management Agency (FEMA) to grant the appeal being made by the city. Officials from the city as well as [redacted] recently met with FEMA representatives here in Washington, DC. I wanted to make you personally aware of the some issues that were brought forth during this meeting.

1) At this time, more than $2,000,000.00 in claims have been made against the [redacted] by subcontractors who were not paid by [redacted] because [redacted] did not receive the amount that the [redacted] had contracted to pay this company. [redacted] has consequently been forced into bankruptcy.

2) A FEMA document exists that shows that FEMA monitored the project, was aware of the contract price at the beginning of the project, and understood the scope of work that was being performed. This is documented in a FEMA Field Summary Report.

3. After FEMA arbitrarily reduced the amount of the contract between the [redacted] from $19.18 per cubic yard to $10.00 per cubic yard, [redacted] spoke by telephone with Mr. Joe Bray, the FEMA representative who was largely responsible for reducing the amount [redacted] received from $19.18 to $10.00 per cubic yard. In that conversation, which was recorded, Mr. Bray admitted that [redacted] should have been paid $19.18 per cubic yard, which is the amount of the contract with the [redacted]

Based on the facts that (a) the [redacted] is being sued for over $2 million by subcontractors (who are local residents) who have not been paid for work rendered, (b) FEMA was aware of the amount that was to be paid and the scope of the work that was being done pursuant to the contract (it is now my understanding that FEMA is stating that the scope of the contract is in question, something I find difficult to believe since FEMA monitored the work being done), (c) a FEMA representative stated after the amount was reduced from $19.18 to $10.00 that [redacted] should have actually been paid the full $19.18, I do not understand why FEMA is continuing to deny payment on this claim. The city was acting in good faith and was not acting maliciously. It is for these reasons, I ask that FEMA look favorably on the [redacted] appeal.

With kind regards.

Sincerely,

SIMPSON 550

RILEY & JACKSON, P.C.
ATTORNEYS AT LAW

ROBERT R. RILEY, JR.
*KEITH JACKSON
*ALSO LICENSED TO PRACTICE IN GA

OF COUNSEL:
FRANCOIS M. BLAUDEAU
MD, FCLM

September 16, 2002

VIA FACSIMILE - 256-638-4895

Jill Simpson, Esq.
P. O. Box 341
Rainsville, Alabama 35986

RE: [redacted]

Dear Jill:

I have reconsidered the wrongful death case that [redacted] wants to bring on behalf of the estate of his grandchild. We are not in a position to prosecute this case due to the fact that I do not believe it would be a strong case since either [redacted] or his wife would be the administrator. I know we have discussed this in the past and that you and [redacted] believe that it is a case that could be won even with him or his wife serving as administrator. I may very well be wrong on this matter, but I do not want to proceed under that arrangement.

Since I do not have an open file in my office, I am uncertain as to when the statue of limitation will run, but I know from our discussions that it is soon. Also, I know that you had indicated that you had other attorneys that you felt would file the case and I am happy that there is someone that will be pursuing this case. I do hope that you are able to recover on the case.

Finally, please know how much we appreciate you sending us cases and I am sorry that we are not going to be able to assist on this particular matter.

Very truly yours,
RILEY & JACKSON

Rob

Robert R. Riley, Jr.

RRR,jr/msd
cc: [redacted]

SIMPSON 526

1744 OXMOOR ROAD BIRMINGHAM, ALABAMA 35209 (205) 879-5000 FAX (205) 879-5901

RILEY & JACKSON, P.C.
ATTORNEYS AT LAW

ROBERT R. RILEY, JR.
*KEITH JACKSON
*ALSO LICENSED TO PRACTICE IN GA

OF COUNSEL:
FRANCOIS M. BLAUDEAU
MD, FCLM

November 25, 2002

COPY

VIA CERTIFIED MAIL
Certified Mail No. 7000-0520-0020-6721-0697

[redacted]
Sylvania, AL 35988

Dear Ann and Scott:

I hope this letter finds both of you well. It was a pleasure meeting [redacted] at Jill Simpson's office recently. I also understand that Cat has spoken with [redacted] regarding the injuries he received that may have been caused by the collision.

We have undertaken extensive research and discussion with physicians, including our of counsel Dr. Blaudeau, regarding the medical possibility of the collision causing [redacted] ulcer or [redacted] hiatal hernia or diverticulitis. Unfortunately, the information we have been able to gather clearly indicates that we will never be able to prove that these injuries are related to the collision. At trial, we would bear the burden of proof on this matter. It would not be sufficient to suggest that it is just as likely that the injuries were caused by the collision as it is they were not. Rather, we would have to prove by a preponderance of the evidence that the injuries were caused by the collision. We do not believe we will be able to do so based upon the information we have learned during our investigation.

Without these injuries at issue, it does not make sense for either of you to hire us to pursue this claim for you because it will ultimately cost more to have us involved than it would cost for you to settle the claim without our involvement. If Rob or I believed that we could add value to your claim by being involved, we would certainly pursue this matter on your behalf. We also have to make economic decisions regarding which claims we can handle and the value of those claims, however, and it does not appear that it makes good economic sense for us to be involved in your claim.

As a result of the foregoing, we are closing our file on this matter and are releasing you from any contract with us. Please understand that different attorneys sometimes view matters in a different way. If you are still interested in having an attorney help you with this matter, you should speak with Jill as soon as possible. **You have 2 years from the date of the accident within which**

1744 OXMOOR ROAD BIRMINGHAM, ALABAMA 35209 (205) 879-5000 FAX (205) 879-5901

[redacted]
November 25, 2002
Page Two

to bring a lawsuit. If you do not bring a lawsuit within that time, you will be barred from doing so forever. Therefore, you should not hesitate in speaking with Jill if that is your plan.

Thank you for giving us the opportunity to evaluate these claims for you. We wish you the best of luck. With best regards,

Very truly yours,
RILEY & JACKSON, P.C.

Keith Jackson

KJ/cat

cc: Jill Simpson, Esq.

RILEY & JACKSON, P.C.
ATTORNEYS AT LAW

ROBERT R. RILEY, JR.
*KEITH JACKSON
*ALSO LICENSED TO PRACTICE IN GA

OF COUNSEL:
FRANCOIS M. BLAUDEAU
MD, FCLM

July 18, 2003

Ms. Jill Simpson, Esq.
Post Office Box 341
Rainsville, Alabama 35986

RE: [redacted]

Dear Jill:

I am enclosing your referral fee for the [redacted] claim and a copy of the Distribution Sheet. I felt I had no choice but to reduce the attorneys' fees given the [redacted] condition and the circumstances of this matter. Thank you for sending the [redacted] to us. With best regards,

Very truly yours,
RILEY & JACKSON, P.C.

Rob Riley/cat

Robert R. Riley, Jr.

RRRjr/cat

Enclosures

1744 OXMOOR ROAD BIRMINGHAM, ALABAMA 35209 (205) 879-5000 FAX (205) 879-

RILEY & JACKSON, P.C.
ATTORNEYS AT LAW

ROBERT R. RILEY, JR.
*KEITH JACKSON
*ALSO LICENSED TO PRACTICE IN GA

OF COUNSEL:
FRANCOIS M. BLAUDEAU
MD, FCLM

October 23, 2003

Jill Simpson, Esq.
P.O. Box 341
Rainsville, AL 35986

Re: [redacted] et al. v. City of Scottsboro, et al.

Dear Jill:

I hope you are doing well. I am enclosing a check in the amount of $1,250.00 for the referral fee for [redacted] in the above-referenced matter. I am still waiting for the Releases from [redacted] and will forward your fee upon receipt. Steve Kennamer is in the process of filing the Estate of [redacted] and once he receives his Letters of Administration, we will be able to finalize her settlement as well.

Very truly yours,
RILEY & JACKSON, P.C.

Robert R. Riley, Jr./cat

Robert R. Riley, Jr.

RRRjr/cat
Enclosure

1744 OXMOOR ROAD BIRMINGHAM, ALABAMA 35209 (205) 879-5000 FAX (205) 879-5000

RILEY & JACKSON, P.C.
ATTORNEYS AT LAW

ROBERT R. RILEY, JR.
*KEITH JACKSON
*ALSO LICENSED TO PRACTICE IN GA

OF COUNSEL:
FRANCOIS M. BLAUDEAU
MD, FCLM

May 17, 2004

Jill Simpson, Esq.
P. O. Box 341
Rainsville, Alabama 35986

Re: [redacted]

Dear Jill:

I am enclosing your referral fee for [redacted] Thank you for sending [redacted] to us. With best regards,

Very truly yours,
RILEY & JACKSON, P.C.

Keith Jackson

KJ/kas

Enclosure

1744 OXMOOR ROAD BIRMINGHAM, ALABAMA 35209 (205) 879-5000 FAX (205) 879-5

Exhibit 6

Exhibit 6 is a DVD identified during the interview of Jill Simpson. *See pages 38-40 of interview transcript.*

For more information, please contact the press office of the House Committee on the Judiciary at 202-225-3951.

DANA JILL SIMPSON
ATTORNEY AT LAW
P.O. BOX 341
RAINSVILLE AL 35986
256-638-4891 telephone
256-638-4895 facsimile

EXHIBIT
7

February 15, 2007

Art Leach, Esquire
678-624-9852

Dear Mr. Leach,

I am sending you some corporate records. It appears your judge in your Mr. Scrushy case has extra curricular activities that he has failed to disclose on his judicial disclosure form. You can get a copy of his disclosure at judicial watch. One example is his professional aviation training service corporation located in Alabama. I have attached a copy of the secretary of state records that shows he dissolved this corporation on or about July 3, 2006. I find this interesting since this was shortly after his other corporation Doss Aviation Inc., received a contract from the United States Air Force in the amount of one hundred seventy eight million dollars awarded to him in May 2006 for providing in flight training school services for the United States Air Force. Additionally if this comes as some what of a surprise to you, Mr. Fuller's corporation Doss Aviation Inc. has over thirty million dollars a year in contracts already in place for providing fuel maintenance to the Air Force, Navy and Department of Defense. Further Mr. Fuller has a corporation called Doss of America which has a subsidiary running out of it and sometimes running out of Doss Aviation Inc. depending on whatever seems appropriate at the time that is making military clothing and other government clothing for the United States Government which is called Aureus International and this subsidiary is not disclosed on his judicial disclosure form as a separate entity.

Furthermore, you can check with the Colorado Secretary of State and discover that Mr. Fuller owns 43.75% of the stock in a privately owned corporation named Doss Aviation Inc., and is listed as the CEO and Chairman of the Board of Directors of said corporation.

It is interesting to note that his judicial disclosure forms do not mention that he is the CEO and Chairman of the Board of Directors of Doss Aviation Inc. Further he is the largest stockholder and the second largest stockholder is a former law partner. It appears that we have a federal judge who is also a large federal defense contractor. Art, after researching what I have told you and looking at the documents that I have sent, you might want to look at 5-U.S.C. App. 501 – 505. You also might want to look at 18 U.S.C. 201-216. Additionally you may want to look at the United States Judicial

Conferences Code of Conduct as regards judges' rights to set as directors and officers of corporations.

I hope that these documents assist you in getting a new trial for Mr. Scrushy and the old trial completely thrown out.

After researching Mr. Fuller quite extensively it is somewhat surprising that he never told anyone that he is a federal contractor. I believe this to be contrary to the laws that govern a federal judge. I am sure you never imaged that Mr. Fuller was involved in such endeavors. The most surprising thing of all is that Mr. Fuller appears to have been receiving a large portion of his information at his office at One Church Street, Montgomery, Alabama. I am sure you realize that is the federal court house as that is the address he gave to the Secretary of State in his corporate documents.

I have additional records available but I was not sure if your fax machine held enough paper to send everything.

Good luck with your endeavors.

Sincerely,

Jill Simpson

Jill Simpson

DJS/ms

Mr. FORBES. Now, in an attempt to keep this so-called investigation afloat, the majority has turned its attention to other outrageous claims. Today, our Committee has turned into a political circus when we should be addressing issues of serious public concern. The American people hopefully will see this event for what it is, just one more in a string of dead-end political investigations, but at least the majority will succeed in one major thing. They will break yet another record. They will move their approval rating even lower than the 11 percent they currently have earned.

And I yield back the balance of my time.

Mr. SCOTT. Thank you.

And I would now like to recognize the Chairwoman of the Subcommittee on Commercial and Administrative Law, the Honorable Linda Sánchez who represents California's 39th Congressional District.

Ms. SÁNCHEZ. Thank you, Mr. Chairman.

During the course of the U.S. attorney investigation, we have attempted to learn why nine talented U.S. attorneys were fired in the middle of Bush's second term. While the answer to that question remains elusive, today, we will try to answer a different question, but a no less troubling question: Did the U.S. attorneys who were not fired, the so-called loyal Bushies, base Federal prosecutions on improper partisan purposes rather than on facts and law?

This hearing, I would remind my colleagues, is about the single most important issue in the criminal justice system: whether the power of the prosecutor, the power to take away someone's freedom, has been abused. The public must learn the full extent to which the Justice Department has been transformed into a political arm of the Bush administration.

During former Attorney General Alberto Gonzales's tenure, nonpolitical Justice Department lawyers, such as assistant U.S. attorneys and immigration judges, were hired for jobs based on party affiliation and campaign contributions rather than because of their qualifications. Top members of Mr. Gonzales's staff attended preelection White House political briefings led by Karl Rove and his aides. Mr. Gonzales authorized almost 900 people in the White House to have communications about ongoing civil and criminal investigations with at least 42 department officials.

Some Federal indictments were timed so as to have a maximum impact on upcoming elections, and evidence suggests that nine U.S. attorneys were fired in part because they refused to make prosecutorial decisions for politically motivated reasons. This hearing will explore whether political considerations improperly influenced prosecutorial judgment in several cases across the county.

In July, Chairman Conyers, Mr. Davis, Ms. Baldwin and I requested documents from the Justice Department on three alleged selective prosecutions that we believe require additional investigation. Former Alabama Governor Don Siegelman, Wisconsin State official Georgia Thompson, and Cyril Wecht, a prominent former Democratic coroner in Pittsburgh. Three months have passed since our original request, and we still do not have an adequate response from the department.

While our document requests focus on three cases of alleged selective prosecution, several other cases have come to my attention

since we started the U.S. attorney investigation. For example, the prosecutions of former Los Angeles City Councilman Martin Ludlow, Georgia State Senator Charles Walker, Pennsylvania State Senator Vince Fumo, Michigan Attorney General candidate Geoffrey N. Fieger, Puerto Rico Governor Anibal Acevedo Vila, and Democratic contributor Peter Palivos may warrant additional scrutiny and Committee action.

At this time, I would ask unanimous consent to enter letters regarding the cases of Mr. Fieger, Mr. Palivos, Mr. Walker and Mr. Acevedo Vila into the record.

Mr. SCOTT. Without objection, so ordered.

[The information referred to follows:]

COMMONWEALTH OF PUERTO RICO
PUERTO RICO FEDERAL AFFAIRS ADMINISTRATION

ANÍBAL ACEVEDO-VILÁ
GOVERNOR

EDUARDO BHATIA
EXECUTIVE DIRECTOR

October 9, 2007

The Honorable John Conyers
Chairman
House Judiciary Committee
2426 Rayburn Building
Washington, DC 20515

Dear Chairman Conyers:

As the representative of the Governor of the Commonwealth of Puerto Rico in the United States, I write to respectfully request a formal investigation by the House Judiciary Committee on the work of the U.S. Attorney's office in Puerto Rico, under the direction of Acting U.S. Attorney Rosa Emilia Rodríguez. Ms. Rodríguez was appointed to this position by Alberto Gonzales on June 8, 2006, and nominated by President Bush to become the U.S. Attorney for Puerto Rico in January 16, 2007.

The similarities between the serious questions surrounding the federal prosecution of Don Siegelman, the Democratic former Governor of Alabama, and the federal grand jury investigation of Aníbal Acevedo-Vilá, the Democratic Governor of Puerto Rico, are truly uncanny. This week, *TIME* magazine published a chilling report by Adam Zagorin of its investigation into the prosecution of former Governor Siegelman titled "*A Case of Selective Justice,*" subtitled "*In Alabama a Democratic former Governor goes to prison. Top Republicans go untouched. A TIME investigation asks the questions the U.S. Attorneys didn't.*" In Puerto Rico, those serious questions remain unanswered and, in order to preserve the purity of the democratic process and the impartiality of the justice system, they must be raised and answered through a thorough investigation.

The House Judiciary Committee is scheduled to hold a hearing on Thursday October 11 on the irregularities in the prosecution of former Governor Siegelman. In Alabama, in the case of former Governor Siegelman, the facts that have come out make it apparent that the Bush Administration engaged in a case of selective prosecution, where politics seems to have trumped justice. In Puerto Rico, the facts that have come out so far about the investigation

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surrounding Governor Acevedo-Vilá clearly point to a similar case where justice has been sacrificed at the altar of politics. This warrants a hearing and a thorough investigation by your Committee.

In Puerto Rico, Acting U.S. Attorney Rosa Emilia Rodríguez, who has been conducting the lengthy investigation surrounding Governor Acevedo-Vilá, has recused herself and her office from investigating the serious accusations of "pay for play" involving her "political mentor," Republican Resident Commissioner in Congress Luis Fortuño.

Since Mr. Fortuño had supported her nomination and continues to support her confirmation as U.S. Attorney, Ms. Rodríguez deemed that she could not be impartial and recused herself from this investigation of Mr. Fortuño, thus sending the matter to Washington.

This begs the question: If Ms. Rodríguez acknowledges favoritism towards Mr. Fortuño and states that she and her office cannot investigate him due to her lack of impartiality, how can she continue to investigate Mr. Fortuño's chief political rival, Governor Acevedo-Vilá?.

Mr. Fortuño - Puerto Rico's first ever Republican Member of Congress - has filed to be his party's candidate to run for Governor against Governor Acevedo-Vilá in the island's general elections in November 2008. Mr. Fortuño was drafted to run for Congress by none other than Karl Rove. In fact, Mr. Fortuño's former campaign manager, Ms. Annie Mayol, worked at the White House for Karl Rove.

Given the favoritism acknowledged by Ms. Rodríguez and her recusal in the investigation of Mr. Fortuño, if Mr. Fortuño were to become Governor of Puerto Rico and Ms. Rodríguez was the U.S. Attorney, will she and the office of the U.S. Attorney for Puerto Rico then have to be recused from all investigations surrounding Mr. Fortuño and his administration? If so, the implications are disconcerting.

It is not just the political leanings of Ms. Rodríguez that are a concern. The investigation by Ms. Rodríguez's office surrounding Governor Acevedo-Vilá has been plagued by constant leaks of embarrassing and politically damaging, yet false or misleading, information. Furthermore, there have been repeated violations of the federal laws mandating confidentiality of grand jury proceedings. In fact, since IRS agents have worked with federal agents in this investigation, the Inspector General of the U.S. Treasury Department has just sent a letter informing that his office will investigate the alleged irregularities by the IRS in the federal investigation surrounding Governor Acevedo-Vilá.

Finally, as raised by the U.S. Attorney in Alabama, Ms. Rodríguez's defense against charges of bias is that the investigation surrounding Governor Acevedo-Vilá originated not with her but with her predecessor as U.S. Attorney, Bert García. But, if anything, this defense highlights the irregular manner in which the U.S. Attorney's office under Ms. Rodríguez has handled this investigation. First, while Bert García was the U.S. Attorney, the public did not know about the investigation, because it was properly kept confidential. The leaks began the week after Ms. Rodríguez assumed the position of Acting U.S. Attorney. Second, we have learned that the investigation by Mr. García was merely an offshoot of an investigation by a grand jury in Philadelphia into fundraising practices by certain residents of Pennsylvania, in relation to several political campaigns, including that of then Resident Commissioner Aníbal Acevedo-Vilá. As is the norm with these campaign finance cases, the investigation centers on the contributors, not the candidates who are often the victims of the unlawful practices of some contributors. Interestingly, the grand jury in Philadelphia is no longer pursuing these allegations, yet in Puerto Rico, under Ms. Rodríguez, the investigation has expanded into a fishing expedition of anything connected to the Governor, from his college transcript to his medical records.

At this point, the leaks tell as they are investigating the Governor. Dozens of seemingly irrelevant witnesses connected to the Governor have been paraded, and announced to the press, before the grand jury, yet no allegation of a real crime has yet to surface among the numerous leaks. As one former Assistant U.S. Attorney, Mr. Miguel Pereira, stated in a letter to the Chairman of the

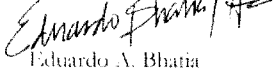
Senate Judiciary Committee, he believes that the reason for Ms. Rodriguez's irregular behavior in the investigation may include "an outright desire to use the federal government's power in order to interfere with local political processes."

Chairman Conyers, your Committee's investigation of the U.S. Attorney's Office in Puerto Rico is necessary. Puerto Rico deserves a serious investigation and oversight into this office, the process through which Ms. Rodriguez was selected, the way in which she has carried out her duties as an Acting U.S. Attorney, and into whether her political and partisan ties have indeed dictated her actions.

Ms. Rodriguez's confirmation by the U.S. Senate is apparently on hold. Ms. Rodríguez's interim appointment expires on Friday October 12, under the rules of the "Preserving United States Attorney Independence Act of 2007." However, the law does not affect her appointment as U.S. Attorney for Puerto Rico and, under the new law, she can still be appointed on an interim basis by the judges of the U.S. District Court for the District of Puerto Rico.

As the *TIME* magazine report concludes in the case of former Governor Siegelman, there are heightened suspicions that the prosecution in that case "was a case of selective justice and that in the Bush Administration, enforcing the law has been a partisan pursuit." This epidemic of selective justice did not only touch Alabama. Puerto Rico seems to have been affected as well. An investigation is thus warranted.

Sincerely,



Eduardo A. Bhatia

Ms. SÁNCHEZ. Anecdotal concerns regarding alleged politically based select prosecutions have been reinforced by an academic study by Professor Donald Shields, a witness at today's hearings, and John Cragan. The study found Federal prosecutors during the Bush administration have indicted Democratic officeholders far more frequently than their Republican counterparts. I look forward to hearing Professor Shields' testimony today and to gaining a better understanding as to why Democrats are disproportionately targeted for Federal prosecution.

I was encouraged that when Attorney General Nominee Michael Mukasey was asked about the role of politics in law enforcement decisions, he responded, "Partisan politics plays no part in either the bringing of charges or the timing of charges." However, as we learn from the divergence of Mr. Gonzales's initial public statement from his actions at the department, I will reserve judgment on Mr. Mukasey until we are certain that his actions reflect the interests of the American people rather than simply the President.

I hope that, if confirmed, Mr. Mukasey will act quickly to remove the cloud of politicization over the Justice Department and help steer clear the department back to its core mission: to guarantee fair and impartial administration of justice for all Americans. Ensuring that U.S. attorneys base prosecutions on legitimate crimes instead of political considerations would be a good start. The American people need to be assured that political calculations do not determine whether an individual is arrested or prosecuted.

And with what, I yield back the balance of my time.

Mr. SCOTT. Thank you, Ms. Sánchez.

And I would like to now recognize the Ranking Member of the Subcommittee on Commercial and Administrative Law, the Honorable Christopher Cannon, who represents Utah's Third Congressional District.

Mr. CANNON. Thank you, Mr. Chair.

I would like to begin by asking unanimous consent to submit for the record correspondence between Commercial and Administrative Law and the Justice Department. There are three separate items here, and I do not think we need to identify them separately.

Mr. SCOTT. Without objection, so ordered.

[The information referred to follows:]

ALAN M. DERSHOWITZ

1575 MASSACHUSETTS AVENUE
CAMBRIDGE · MASSACHUSETTS · 02138

October 22, 2007

John Conyers, Jr.
United States Senate
2426 Rayburn Building
Washington, DC 20510

Dear Chairman Conyers and esteemed members of the Committee,

I write to you as an attorney who represents attorney Geoffrey Fieger who has been targeted by the Justice Department based on his financial support to the John Edwards 2004 presidential campaign. The manner in which the Justice Department has conducted its investigation of my client is alarming and unprecedented. In November 2005, the Justice Department, with the express approval of Alberto Gonzales, amassed a small militia of nearly 100 federal agents to raid the Michigan law office of Fieger, Fieger, Kenney, and Johnson. At the same time, federal agents simultaneously appeared at the homes of nearly all of the Fieger firm's employees. The ostensible reason for this massive display of force was to find out why firm employees, their children, and other family members, donated money to the John Edwards campaign. With this, the Justice Department embarked on what I believe to be the largest campaign finance investigation in the history of America.

Shortly after the raid, federal prosecutors convened a grand jury which lasted for nearly two long and painful years. During that time, federal prosecutors compelled individuals, under the threat of the United States Department of Justice, to reveal for whom they voted in the presidential election as well as their history of donations to political candidates. Such acts, which are totally abhorrent to the First Amendment's protections of free speech, were carried out under the guise of law enforcement activity.

In August, the Justice Department indicted the principal members of the Fieger law firm, Mr. Geoffrey Fieger and Mr. Vernon Johnson. *United States v. Fieger*, Docket No. 07-20414 (E. D. Mich.). Like the other cases being reviewed by the Committee, the Justice Department's case against Mr. Fieger reeks of political overtones and incomprehensible theories of prosecution.

For instance, Mr. Fieger is charged with violating 2 U.S.C. § 441f which prohibits making contributions "in the name of another." On its face, this statute was enacted to prevent individuals from sending money to candidates in the names of the dead, the fictitious, or names randomly gathered up from the phone book. But in the *Fieger* case, the Justice Department has charged Mr.

Fieger for giving bonuses to his employees who voluntarily made contributions to John Edwards in their own names and with their own funds. According to the Justice Department, § 441f (prohibiting contributions "in the name of another") also prohibits employers from paying bonuses to corporate employees who make political contributions. With this theory, the Public Integrity Section of the Justice Department has free reign to charge almost any employer or corporate employee with a crime.

During the course of discovery, it has also been revealed that the Justice Department devised new tricks to spy on the political activities of American citizens. Specifically, the Justice Department has been using secret subpoenas to secure financial records for dozens of individuals. To do this, the government simply gagged the financial institutions from revealing the existence of its subpoena. To ensure its tactic would work, the Justice Department threatened the recipients of the subpoenas to keep quiet or else they would be impeding law enforcement activities, in other words obstructing justice. This is not how the law works. Under 12 U.S.C. § 3413(I) and § 3409, congress provided the Justice Department with a mechanism to seal the existence of a grand jury subpoena served on a financial institution. The Justice Department is completely ignoring the law and has created a new secret subpoena power to investigate the political activities of its targets.

I strongly urge this Committee to take action to stop the politically motivated investigations currently being carried out by the Justice Department. I am grateful for the Committee's time in listening to my concerns.

Sincerely,

/s/ Alan M. Dershowitz
Alan M. Dershowitz

Vicky Palivos
1700 S. Braymore Drive
Inverness, IL 60010
(224) 875-8356

October 16, 2007

The Honorable John Conyers, Jr.
2426 Rayburn HOB
Washington, D.C. 20515

Dear Chairman Conyers:

I would like to bring to your attention the story of my husband, Peter Palivos. This story represents serious issues of injustice from the criminal justice department. Peter Palivos, a respected attorney of more 22 years in Chicago, Illinois was recently tried and convicted of conspiracy to obstruct justice charges. The charges brought by U.S. Attorney Patrick Fitzgerald's office stemmed from my husband's unwillingness to cooperate as a witness against former Governor George Ryan.

Since my husband did not cooperate, federal prosecutors and agents created a crime, intimidated witnesses into testifying falsely against my husband and intimidated attorneys into not disclosing that their clients were forced to testify falsely.

A detailed explanation of crimes created, the actors involved is attached in my report. The actions of the U.S. Attorney's office must not go unchecked. To do so, would lead to an erosion of democracy and fundamental fairness. I urge you to use the power of your committee to investigate the issues surrounding the conviction of my husband, Peter Palivos.

Thank you in advance for your assistance. I am available to discuss this matter at your convenience.

Respectfully,
Vicky Palivos
Vicky Palivos

Enclosures

Cc: The Honorable Bobby Scott (D-VA)
The Honorable Bobby L. Rush (D-IL)
The Honorable Danny K. Davis (D-IL)

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October 22, 2007

The Honorable John Conyers, Jr.
Chairman, U.S. House of Representative
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

RE: Charles W. Walker, Sr.

Dear Chairman Conyers:

Along with the concerns about Governor Siegelman and George Wilson being investigated because of pressure from the White House and from Karl Rove, there are concerns about the prosecution of Senator Charles W. Walker, Sr. Senator Walker was a highly prominent African-American State Senator, who was particularly visible in his efforts to prevent the confederate flag from flying over the Georgia State Capitol. Senator Walker battled with Governor Sonny Perdue, who earlier had been defeated by Senator Walker in a race to become the Senate Majority Leader. Governor Perdue then switched parties and became a contender for the governorship against Senator Walker's candidate for Governor. The tension over the confederate flag issue was one of the underlying issues in the campaign. Governor Perdue's friend, Richard Thompson, was United States Attorney. He began investigating a number of prominent Democrats. A subsequent investigation by the Justice Department revealed that U.S. Attorney Thompson was carrying out a political agenda with respect to some of his investigations. For example, U.S. Attorney Thompson began investigations against Terry Coleman, Speaker of the House for the Georgia House of Representative, State Senator Van Streat, and Senator Majority Leader Charles Walker. He also subpoenaed records of Governor Roy Barnes. An investigation by the Office of Professional Responsibility of the Justice Department revealed that U.S. Attorney Thompson had abused his office and that his initiation of the investigations was not consistent with the standards required by the Justice Department. After the investigation, U.S. Attorney Thompson resigned. Investigations against Governor Barnes and Mr. Coleman were dropped, but the investigation against Senator Walker continued.

Against this background, it is essential for Congress to look into whether the investigation and prosecution of Senator Walker was motivated by the significant role he played in Democratic politics in Georgia and because he stood a chance of becoming the next Governor of

Georgia.

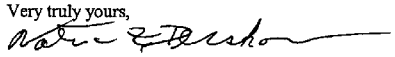
Ironically, the case against Senator Walker was tried before a Judge who had been accused, prior to his nomination, of being a member of private clubs that discriminated on the basis of race. U.S. District Court Judge Dudley H. Bowen, Jr. had been nominated by Senator Sam Nunn over the opposition of a number of watchdog groups seeking a diversified federal judiciary. Senator Walker opposed the nomination.

Senator Walker's trial raises a number of questions going to the heart of our judicial system. Among them is the fact that the jury pool was expanded significantly from a largely minority population in Augusta, Georgia, to encompass outlining areas of Augusta, which were predominantly white. Senator Walker's trial attorney challenged this as a naked attempt to dramatically change the racial composition of the jury pool.

Thereafter, when a number of whites were challenged under a standard peremptory system, Judge Bowen, using his own personal standards and not those repeatedly announced by the Supreme Court, determined that the challenges were not race neutral and put four jurors back on the jury after they knew that they had been stricken. The Eleventh Circuit held that the reasons for rejecting defense counsel's peremptory challenges were not supportable. Nonetheless, the Court determined that it would defer to Judge Bowen's discretion. The issues relating to the jury selection process will be part of the Petition for a Writ of Certiorari that Senator Walker will be filing in the Supreme Court.

Underlying this case are two core questions: did politics affect the criminal justice system and did the judicial system endorse or promote a racially biased jury to secure a conviction of a visible and upcoming minority Democrat. The examination by Congress of what lies behind this prosecution and what occurred during this trial is in the highest tradition of the goals and objectives of Congress.

Very truly yours,



Nathan Z. Dershowitz

NZD:iba

Mr. CANNON. First of all, I would like to thank our witnesses for being here today. This is always difficult, and we appreciate your coming.

To my colleagues on the Commercial and Administrative Law Subcommittee and the Crime, Terrorism and Homeland Security Subcommittee, let me say that I, at least in one way, I am glad that we are here today. That is we do not often have a chance to sit together. So it is pleasant to have a joint hearing.

As a preliminary matter, I would like to associate myself with the comments of the distinguished Ranking Member of the Crime Subcommittee, in particular his discussion about politics behind this kind of a hearing. And what I have heard so far from the other side appear to be these kinds of same wild allegations that we have looked at continuously, which have been in many particular cases dispelled and which remain a vast effort of time by this Committee, by the full Committee, by the Subcommittee on Commercial and Administrative Law in its oversight process of the U.S. attorney's office.

Let me just agree with my fellow Ranking Member that we ought to be thinking about what the effect of these hearings is on the stature of this Committee and our Subcommittees, and I might just add by way of a final note here, a precatory note, that we actually know why the U.S. attorneys were fired. The majority refuses to actually look at the facts behind it. But none of the allegations that have been so flagrantly thrown around have been shown to have any substance at all in the firing of the U.S. attorneys, and the damage done to the Justice Department, which I agree has been done, is in no small part a result of these unsubstantiated allegations, which can be made in the most flagrant fashion from the dais and yet are subject to cross-examination and dissipation when we have witnesses and testimony.

I would just mark the sixth anniversary of September 11, 2001, and since that tragic day, we have witnessed bombings in Bali, the attack on the Madrid trains, the attack in London at the London subway, attempts on Heathrow and Glasgow airports. We witnessed the foiling of terror plots, for example, on inbound planes from France and Germany and elsewhere, and it is thanks to the heroic and incessant efforts of the Justice Department entities that we oversee as well as other agencies and our military, that it is the list of attacks we have foiled and terrorists we have destroyed that has grown longer, not the attacks on our soil.

But, today, we are talking about our efforts and tools in the war on terror and the war on crime before the Crime Subcommittee, and we are not talking about issues of the prosperity and stability of our economy in the context of commercial and administrative law, as we would in our Subcommittee. Instead, we are once again talking about U.S. attorneys and selective prosecutions for political reasons.

The Commercial and Administrative Law Subcommittee has spent an inordinate amount of time on this whole project over the course of this year, and what has come from the investigation is not much more than a sullied Department of Justice and a partisan whirlwind for the majority to push on the press in the battle to destabilize that agency. This witch hunt has never really found any-

thing that justified the Committee's extraordinary expenditure of time, but it kept going.

As one excursion after another has led nowhere, the majority has simply shifted the targets, changed the allegations and cast its wrecking ball anew, and so we find ourselves today perhaps at last at the logical conclusion of this irresponsible distortion of the oversight process.

We are summoned by the majority to hold a hearing of these two important Subcommittees to what end? To turn the partisan lens on two pending criminal manners. One is on appeal. One is has not even yet come to trial. The department, of course, cannot appear to defend itself, the cases are pending, and our witnesses, Mr. Thornburgh and Mr. Jones, know that. The Members of these two Subcommittees know that. As a result, we are hard pressed to come to the truth.

I contend we should not be here at all, and our premature inquiry promises nothing other than to undermine the criminal justice system and perhaps even produce a miscarriage of justice in these two cases, for every word that those who would attack the department for these two prosecutions uttered can be broadcast—in fact, we have cameras here today that are broadcasting—reported in print or reported on the Web in the districts in which the trials will occur. This hearing will risk tainting the jury pools in those districts. This is an unfortunate use of Committee time and resources, and I do not intend to prolong it further by these comments.

I hope at last when we get to the dead-end of all this, we can move on and help the Justice Department reclaim its appropriate role in society.

And so with that, Mr. Chairman, I yield back.

Mr. SCOTT. Thank you, Mr. Cannon.

We have a vote pending, but we would like to complete the statements. So I will call on the Chairman of the full Judiciary Committee, the Honorable John Conyers, who represents Michigan's 14th Congressional District.

Mr. CONYERS. Thank you, Chairman.

I want to welcome the witnesses personally, and I suppose I could best use my time by presenting and defending the tremendously important record of the Judiciary Committee. I am not going to do that because I have been weaving, as the longest-serving Member and maybe the oldest, a thread through this that runs something like this.

First of all, this is about the Department of Justice, and it is about the assistant U.S. attorneys. And we have a real surplus of them here. I mean, this Committee is very expertly organized around, first of all, our staff. Mike Volkov, Rob Reid, Mark Dubester have all served with distinction in the Department of Justice. In the full Committee among the Members, we have Artur Davis; we have Mr. Schiff, an assistant U.S. attorney from California; we have Zoe Lofgren, a district attorney; and we also have Bill Delahunt, a district attorney from Massachusetts. So that is the level of research and organizing that has been going on.

Now going along with that thread that encompasses the experience in this room, we have three attorney generals, one is Dan

Lungren. Although he is a state attorney general, he is the only one we have, and we are proud of that. What I remember best about Dan Lungren when he was the attorney general of the largest state in the union is that he said that character is doing what is right when no one is looking, and I think that is marked the way he has approached our activity across the years.

The second person I would bring to your attention is the Attorney General in the 1940's, Robert Jackson, who did a lot of other things beside be Attorney General, but, you know, when he was addressing the Attorney Generals back in the 1940's, he made some observations that our Chairman, Bobby Scott, referenced, and I want to just remind you how important the job is.

So he talked about how much power U.S. attorneys have. He was addressing a conference of U.S. attorneys, and he said that they have more power than almost anybody else in government and, if it is misused, it has horrible ramifications, and it is in that sense that he is quoted liberally throughout this hearing and our preparation for it.

And then the third Attorney General is the one that sits before us today. You see, I was around when Mr. Thornburgh was the Attorney General, and he came in under some very difficult circumstances. There were some big problems which he had to address, and he did it in a fashion that reminds me of why he is here today. This is not an accident. He is still pursuing the ability as when he was an attorney to make the Department of Justice and those that serve in it, the U.S. attorneys and everybody else, as accountable and as independent and as impartial as is humanly possible, and it is that that guides us in this hearing.

What makes me proud is that most of the Members of this Committee can avoid the notion of dipping into partisanship. It is very tempting to do in a legislative arena, but we do not do that. We are mostly trying to improve the justice system. Our hearings here follow the U.S. attorneys' firing, I mean, because one of the problems of the politicization of the Department of Justice was the abuse of prosecutorial authority, and that is what brings us here.

So, ladies and gentlemen, there is a very logical and reasonable line of approach here. We want to build the Department of Justice up. We want it to gain the confidence that it has enjoyed in the past, and our best way to do it is to shine light on the problem areas so they will not happen ever again.

I am happy that we have done that, and these hearings are unique. The Members are absolutely correct this has never been done before, and I am proud of the fact that it is being done on my watch because we think that by examining the problems, we are going to be able to come together and move forward, and so I commend the multiplicity of Chairmen and Ranking Members that are gathered here this morning, and I am so happy to see the witnesses, and I thank the gentleman.

Mr. SCOTT. Thank you.

We have just a few moments left on the vote. We will recess the Committee hearing. It will be approximately 10 minutes. We will be right back.

[Recess.]

Mr. SCOTT. The hearing will come to order.

We have a distinguished panel of experts from whom we will hear testimony today.

Our first witness is the Honorable Richard Thornburgh of the law firm of Kirkpatrick & Lockhart Preston Gates Ellis. Mr. Thornburgh serves as an active advisor and counselor to the firm's government affairs clients with respect to matters concerning federal, state and local governments. He served as governor of Pennsylvania, United States attorney for the Western District of Pennsylvania, and was the Attorney General for the United States under President Reagan and under President George Herbert Walker Bush. He has a bachelor's degree from Yale and an LLB from the University of Pittsburgh Law School.

The next witness will be Donald Shields, professor emeritus at the University of Missouri at St. Louis. He has conducted extensive research and authored a document entitled An Empirical Examination of the Political Profiling of Elected Officials: A Report on Selective Investigations and-or Indictments by DOJ's U. S. Attorneys under Attorneys General Ashcroft and Gonzales. He has a bachelor's degree and a master's degree from the University of Missouri and a Ph.D. from the University of Minnesota.

Our final witness will be Mr. Douglas Jones from the law firm of Whatley, Drake and Kallas. He served as U.S. attorney for the Northern District of Alabama from 1997 to 2001, and since entering private practice, he has been appointed as a special attorney general for the State of Alabama. He holds a bachelor's degree from the University of Alabama, a juris doctorate from Cumberland Law School at Stanford University.

Mr. Thornburgh?

Mr. THORNBURGH. Chairman Scott——

Mr. SCOTT. Excuse me.

As you will note the lights before you, we are asking our witnesses to do the best they can to confine their testimony to 5 minutes. The light will go from green to yellow to red, which will indicate that the time is up.

I am sorry.

Mr. Thornburgh?

TESTIMONY OF THE HONORABLE RICHARD THORNBURGH, KIRKPATRICK AND LOCKHART PRESTON GATES ELLIS, LLP, WASHINGTON, DC

Mr. THORNBURGH. Thank you.

Chairman Scott, Chairman Conyers, Chairwoman Sánchez, Ranking Member Forbes and other Members of the Committee and Subcommittees, thank you for the opportunity to speak to you today about the significant dangers and serious harm that can be caused by the politicizing of Federal criminal investigations and prosecutions by the U.S. Justice Department.

First and foremost, let me affirm my own belief that politics has no place in the decision-making process of whether or not to charge citizens of the United States with any crime—federal or otherwise. These citizens must have confidence that the Department of Justice is conducting itself in a fair and impartial manner without actual political influence or the appearance of political influence. Unfortunately, that may no longer be the case.

Let me begin by stating that I come before you as an advocate representing Dr. Cyril Wecht, the former elected coroner of Allegheny County, Pennsylvania, who is currently under indictment in the Western District of Pennsylvania and in which proceedings my firm represents him.

Although the indictment contains 84 counts, it is not the type of case normally constituting a Federal corruption case brought against a local official. There is no allegation that Dr. Wecht ever solicited or received a bribe or kickback. There is no allegation that Dr. Wecht traded on a conflict of interest in conducting the affairs of his elected office. None of the traditional indicia of public corruption are presented in this case.

Instead, the prosecution of Dr. Wecht seeks to use the unprecedented theories which seek to convert a hodgepodge of alleged violations of home rule charters, county codes and state ethic provisions into Federal felonies. Many of these alleged underlying violations do not even carry state-mandated penalties, yet are now utilized as a vehicle for Federal felony prosecutions which brand the accused as a corrupt public servant.

A detailed summary of the shortcomings in these charges is set forth in my written statement, especially at pages four and five, which I ask be made part of the record.

Suffice it to say, most of the charging accounts allege what I would call nickel-and-dime transgressions which are sought to be converted into Federal felony charges. Some of these counts involve, for example, the use of office fax machines for personal business, such as the transmission of Dr. Wecht's curriculum vitae and fee schedule to a local public defender seeking his assistance and an executed contract for a teaching engagement, postal charges for mailing histological slides to attorneys in black lung cases who had consulted Dr. Wecht and expense billing irregularities in invoices mailed to Dr. Wecht's private clients, a number of felony counts derived from alleged improper billing for use of a county car while traveling to outlying counties to assist local prosecutors and coroners.

Astonishingly, the government's own evidence indicates that they knew prior to indictment that an audit of the billings of Dr. Wecht of the counties in question showed them to be 99.99 percent accurate, a record that was nonetheless turned into 37 separate felony counts covering a total of $1,700, and the list goes on.

What has come to pass is the realization of the often-expressed fear that the generality and ambiguity of the mail fraud statutes could be used to expand Federal jurisdiction so far into matters of state government that it could be used, as one judge put it, to regulate theft of pencils from an office supply cabinet. The Congress might fairly be asked: Is that what you intended?

A similar expansion of Title 18 USC 666(a)(1)(A) charges that Dr. Wecht, in each year from 2001 to 2005, stole property valued at $5,000 or more, charges not based on a classic theft required by law, but on Dr. Wecht's use of county personnel, equipment, resources and, yes, space of the coroner's office to assist in his private business. We thus found ourselves asking, "Why would the U .S. attorney's office for the Western District of Pennsylvania attempt to make such a stretch of Federal law?"

With that background, we came to learn, in part from your Committee's investigation, as well as from various news accounts, that the Department of Justice, in its evaluation of its prosecutors, in certain cases, fired U.S. attorneys not for performance-based reasons, but for political ones. We came to learn that those United States attorneys, who, among other things, aggressively pursued Democrats, as opposed to those who did not, remained in place or were promoted. In fact, we learned from the study conducted by Messrs. Shields and Cragan that this Administration is seven times more likely to prosecute Democrats than Republicans.

Possessed of that information, the prosecution of Dr. Cyril Wecht takes on a different and troubling light. Dr. Wecht is a prominent and highly visible Democrat in the predominantly Democratic region of the Western District of Pennsylvania. He is known nationally and internationally as one of the world's leading forensic pathologists. He often speaks and is retained to conduct autopsies in some of the country's highest profile cases.

In addition to Dr. Wecht's renown in the area of forensic pathology, he has always been a contentious, outspoken, highly critical and highly visible Democratic figure in Western Pennsylvania. In other words, he would qualify as an ideal target for a Republican U .S. attorney trying to curry favor with a department which demonstrated that if you play by its rules, you will advance. Ms. Buchanan must have observed this phenomenon firsthand during her service as the director of the executive office of U.S. Attorneys.

Dr. Wecht's case, although high profile, was not the only apparent political prosecution in Western Pennsylvania. In addition to Dr. Wecht, U.S. Attorney Buchanan conducted highly visible grand jury investigations of the former Democratic mayor of Pittsburgh Tom Murphy, and Peter DeFazio, the former Democratic sheriff of Allegheny County in which Pittsburgh is situated. She also prosecuted some lesser-known Democratic Party members in the sheriff's office.

It should also be noted that of these three high-profile, very public, Democratic prosecutions, one resulted in a misdemeanor macing plea, one resulted in no plea and an alternative resolution, and Dr. Wecht's case remains pending. All three Democrats were front-page stories during the run-up to the 2006 elections

During this same period, not one Republican officeholder was investigated and-or prosecuted by Ms. Buchanan's office—not one. Although a whistleblower in Republican Congressman Tim Murphy's office accused the congressman of using paid staff members in his election campaign, no investigation was conducted that we are aware of. Despite a local outcry that former Republican Senator Rick Santorum was defrauding a local community by claiming residency when he actually resided in Virginia for purposes of having the school district pay for his children's cyberschooling, we are aware of no investigation being conducted.

I cannot and do not opine on the merits of either case, but the fact that no investigation was undertaken stands out when Democrats in the Western District of Pennsylvania have been investigated and indicted in such a highly visible manner.

This stands in stark——

Mr. FORBES. Mr. Chairman, point of order.

Mr. SCOTT. The gentleman——

Mr. Thornburgh, could you summarize quickly the rest of your testimony?

Mr. THORNBURGH. I am about through, Mr. Chairman, and will do my best.

We have set forth in our written statement to which I refer, once more, concerns we have about the conduct of the case agent, FBI agent in this case, and I will refer you to that.

One might argue that Dr. Wecht is entitled to a day in court, and he will have that day. But the public's perception of apparent politics at the Department of Justice will not easily be changed or remedied, no matter the outcome of his trial. Sally Kalson, a veteran columnist for the Pittsburgh Post-Gazette, wrote in her column of July 22, 2007, "An ambitious and enthusiastic Bush partisan like U.S. Attorney Mary Beth Buchanan might well consider Dr. Wecht a plum target, good for many brownie points at the White House." She further wrote, "The jury has yet to convene on Dr. Wecht, but the verdict on the Bush administration is loud and clear: 100 percent political."

This is the unfortunate manner in which this Department of Justice is viewed in the Western District of Pennsylvania.

We should not allow any citizen of the United States to proceed to trial knowing that his prosecution may have been undertaken for political reasons as opposed to being done to serve the interests of justice. Sadly, that appears to have been so in the case against Dr. Wecht.

And I thank you for the extended opportunity to appear before you today.

[The prepared statement of Mr. Thornburgh follows:]

PREPARED STATEMENT OF THE HONORABLE RICHARD THORNBURGH

Testimony of Dick Thornburgh
Counsel, Kirkpatrick & Lockhart Preston Gates Ellis LLP
and former Attorney General of the United States

At a Hearing before the Committee on the Judiciary; Sub-Committee on Crime, Terrorism, and Homeland Security; and Sub-Committee on Commercial and Administrative Law of the United States House of Representatives

"Allegations of Selective Prosecution: The Erosion of Public Confidence In Our Federal Justice System"

Tuesday, October 23, 2007

Chairman Conyers, Ranking Member Smith, Chairman Scott, Ranking Member Forbes, Chair Sanchez, Ranking Member Cannon, and members of the Committee and Sub-Committee. Thank you for the opportunity to speak today about the significant dangers and serious harm that can be caused by politicizing federal criminal investigations and prosecutions by the Justice Department. With me today are my partners, Jerry S. McDevitt and Mark A. Rush.

First and foremost, let me affirm my belief that politics has no place in the decision-making process of whether or not to charge citizens of the United States with any crime, federal or otherwise. Confidence in the U. S. Department of Justice's decision-making authority in conducting criminal investigations and prosecutions, in particular, must be absolutely paramount. The citizens of the United States must have confidence that the Department is conducting itself in a fair and impartial matter without actual political influence or the *appearance* of political influence. Unfortunately, that may no longer be the case.

Let me begin by stating that I come before you as an advocate representing Dr. Cyril Wecht, the former elected Coroner of Allegheny County, who is currently under indictment in the Western District of Pennsylvania and in which proceedings my firm represents him. Although the indictment contains 84 counts, it is not the type of case normally constituting a

federal "corruption" case brought against a local official. There is no allegation that Dr. Wecht ever solicited or received a bribe or kickback. There is no allegation that Dr. Wecht traded on a conflict of interest in conducting the affairs of his elected office. None of the traditional indicia of public corruption are presented in this case. Instead, the prosecution of Dr. Wecht seeks to use unprecedented theories which seek to convert a hodgepodge of alleged violations of Home Rule Charters, County Codes, and State Ethic Provisions into federal felonies. Many of these alleged underlying violations do not even carry state mandated penalties, yet are now utilized as a vehicle for federal felony prosecutions which brand the accused as a corrupt public servant.

Dr. Wecht's case demonstrates that the oft expressed concerns of leading jurists, academicians, and commentators about the potential for abuse of the federal mail fraud statutes in political public corruption prosecutions have become reality in this most bizarre prosecution of one of Pittsburgh's most colorful, accomplished, and brilliant men, Dr. Cyril Wecht.[1]

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[1] See e.g., United States v. Murphy, 323 F.3d 102, 118 (3d Cir. 2003) ("[A] loose interpretation of the mail fraud statute creates 'a catch-all political crime which has no use but misuse.'"); United States v. Handakas, 286 F.3d 92, 107-08 (2d Cir. 2002) ("An indefinite criminal statute creates opportunity for the misuse of government power. To appropriate Judge Winter's phrase, the honest services doctrine renders mail fraud 'a catch-all . . . which has no use but misuse'") (quoting United States v. Margiotta, 688 F.2d 108, 144 (2d Cir. 1982) (Winter, J., dissenting)); United States v. Martin, 195 F.3d 961, 965 (7th Cir. 1999) (Posner, J.) ("Concern has long been expressed that the failure of the mail fraud statute to define 'fraud' invites prosecutorial overreaching . . . The concern has been exacerbated by Congress's restoration to the mail fraud statute of the "intangible rights" doctrine . . .") (citations omitted); Margiotta, 688 F.2d at 143, 144 (Winter, J., dissenting) ("[W]hat profoundly troubles me is the potential for abuse through selective prosecution and the degree of raw political power the free swinging club of mail fraud affords federal prosecutors . . . When the first corrupt prosecutor prosecutes a political enemy for mail fraud, the rhetoric of the majority about good government will ring hollow indeed"); see also Cleveland v. United States, 531 U.S. 12, 24 (2000) (Ginsburg, J.) (warning that, in the context of mail fraud, "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance in the prosecution of crimes") (quoting Jones v. United States, 529 U.S. 848, 858 (2000)); Coffey, Jr., John C., Modern Mail Fraud: The Restoration of the Public/Private Distinction, 35 Am. Crim. L. Rev. 427, 464 (1998) ("Both the vagueness doctrine and the separation of powers require that judges not view themselves as

Specifically, the concern that the generality and ambiguity of the mail fraud statutes could be used to expand federal jurisdiction so far into matters of state government that it could be used to regulate theft of "pencils from the office supply cabinet" has now come to pass.[2] Indeed, one central tenet of this prosecution, reflected in 23 of the counts, is that Congress made it a federal felony under the "honest services" branch of wire fraud to use an office fax machine for personal business. Not only is use of the office fax now a federal felony, so too is the use of "space" in the public office for items unrelated to the discharge of office, such as storage of personal files. That is now to be treated as the requisite "theft" within the meaning of 18 U.S.C. § 666, a statute which has also been used aggressively in the public corruption cases this Committee is investigating. The Congress might fairly be asked—"Is that what you intended?"

To date, no federal prosecutor in the Western District of Pennsylvania has ever made such an expansive assertion of federal power in the numerous political corruption cases brought through the generations of Allegheny County politics. Such an expansive view of federal criminal jurisdiction effectively transforms common everyday events in the public workplace into federal felonies. Under the expansive view of mail fraud jurisdiction asserted in this case, there is nothing done in a state official's office unrelated to the official function of office which is not capable of being treated as a federal felony, with the power to prosecute for such alleged infractions placed in the discretion of the political party in power, as is the case here. Although this exceedingly broad and liberal view of federal jurisdiction in derogation of powers reserved to the state is being used here to prosecute a Democrat, if it becomes precedential, the same legal

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authorized by § 1346 to expand the net of criminal liability as seems appropriate from time to time in light of the current social and political climate.").

[2] See United States v. Panarella, 277 F.3d 678, 692 (3d Cir. 2002).

principles will henceforth be available to any party in the future to wage war against political opponents using the federal courts.

Permit me to take a moment to review the 84 Count Indictment of Dr. Wecht to better illustrate the foregoing.

The Indictment opens with the charge that the mere use of the Coroner's fax machine four times in 2002, eleven times in 2003, eight times in 2004, and once in 2005 for personal business should be treated as 24 federal felonies.

Assuming the cost of a fax is one dollar, the "theft" of $24 worth of the office ink and paper over four years is now pyramided to twenty-four federal felonies. Even salutary uses of the office fax are now federal crimes. Count 20 alleges it was a wire fraud for Dr. Wecht to use the Coroner's fax machine to transmit his curriculum vitae and fee schedule to a public defender in a homicide case where the court had appointed him to provide his forensic pathology expertise. Merely faxing an executed contract for a teaching engagement is the crime charged in Count 4.

Counts 25-32 alleging honest services mail fraud are no better. The alleged mail fraud in those counts consists of the use of the office mail to send eight histological slides, mostly to attorneys in black lung cases who had consulted with Dr. Wecht seeking justice for their clients. Assuming that postage charges were 39 cents, the mere use of $3.20 of postage to mail four histological slides in 2003, and another four in 2004, is transformed into eight federal felonies.

The structure of the Indictment then segues into 47 felony charges of alleged private mail fraud in connection with expense billings to Dr. Wecht's private clients. Counts 33-42 allege expense billing irregularities in invoices sent to various attorneys throughout the country in cases where Dr. Wecht served as their expert. This is alleged to have occurred four times in 2002,

twice in 2003, thrice in 2004, and once in 2005. None of these clients ever claimed to have been defrauded, and many were not even interviewed before the charges were made.

The second component of Dr. Wecht's private matters is thirty-seven felony charges of mail fraud in connection with mileage charges. All these charges are based on the premise that Dr. Wecht used a county car when traveling to outlying counties to assist district attorneys and coroners in state criminal prosecutions and that he should not have charged the mileage charges because he used a county car. The total amount involved in all 37 of these alleged federal felonies over five years is $1,147.15, $229.43 per year, and an average of $31.00 per count. In fact, the Government's own evidence demonstrates that the total amount of the charged mail fraud in the 37 felony counts is .001 percent of the fees earned by Dr. Wecht during that period. Counsel for Dr. Wecht is unaware of any citizen ever being charged in the Western District of Pennsylvania (or elsewhere) with mail fraud charges of this nature.

The Indictment concludes with an equally radical expansion of 18 U.S.C. 666(a)(1)(A) by five counts which allege that, in each year from 2001 to 2005, Dr. Wecht stole "property valued at $5,000 or more." No allegation is made of anything remotely approximating the "classic theft" required by law for such a prosecution. Likewise, no "property" within the meaning of the charging statute is alleged to have been stolen. Instead, the sole premise is that Dr. Wecht's alleged use of county personnel, equipment, resources and yes, "space," of the Coroner's office to assist in his "private business activities" is the requisite "property". In other portions of the Indictment, these same items are referred to not as "property" but as office "resources." Under this amorphous theory, the Government actually contends it does not even have to prove the value of the "property" allegedly stolen—just somehow that it is at least $5,000.

There is, therefore, no serious question but that this prosecution is an extreme attempt to extend the reach of federal prosecutorial power far beyond traditional boundaries to the point where federal prosecutors determine how elected state officials use state cars, who does the typing, what they type, and the use of public office "space." Again, I suggest these do not seem to be the types of activities that Congress intended to criminalize federally.

We thus find ourselves asking, "Why would the U.S. Attorney's Office for the Western District of Pennsylvania attempt to make such a stretch of federal law?"

With that background, we came to learn in part from your Committee's investigation, as well as various news accounts, that the Department in its evaluation of United States Attorneys, in certain cases, fired United States Attorneys, not for performance-based reasons but for political ones. We came to learn that those United States Attorneys who, inter alia, aggressively pursued Democrats, as opposed to those that did not, remained in place or were promoted. In fact, we learned from the study conducted by Donald Shields and John Cragan, from the University of Minnesota, that this Administration is *seven times* more likely to prosecute Democrats than Republicans. Possessed of that information, the prosecution of Dr. Cyril Wecht takes on a different and troubling light.

Dr. Wecht is a prominent and highly visible Democrat in the predominantly Democratic region of the Western District of Pennsylvania. He is known nationally and internationally as one of the world's leading forensic pathologists. He often speaks and is retained to conduct autopsies in some of this country's highest profile cases. In addition to Dr. Wecht's renown in the area of forensic pathology, he has always been a contentious, outspoken, highly critical and highly visible Democratic figure in Western Pennsylvania. In other words, he would qualify as an ideal target for a Republican U.S. Attorney trying to curry favor with a Department which

demonstrated that if you play by its rules, you will advance. Ms. Buchanan must have observed this phenomenon first hand during her service as the Director of the Executive Office of U.S. Attorneys.

Dr. Wecht's case, although high profile, was not the only apparent political prosecution in Western Pennsylvania. In addition to Dr. Wecht, U.S. Attorney Buchanan conducted highly visible grand jury investigations of the former Democratic Mayor of Pittsburgh, Tom Murphy, and Peter De Fazio, the former Democratic Sheriff of Allegheny County (in which Pittsburgh is situated). She also prosecuted some lesser-known Democratic Party members in the Sheriff's Office. It should also be noted that of these three high profile, very public, Democratic prosecutions, one resulted in a misdemeanor macing plea; one resulted in no plea and an alternative resolution; and Dr. Wecht's case remains pending. All three Democrats were front-page stories during the run-up to the 2006 elections. The damage was done by widespread media coverage with little apparent concern as to whether justice was meted out.

During this same period not one Republican officeholder was investigated and/or prosecuted by Ms. Buchanan's office. Not one. Although a whistleblower in Republican Congressman Tim Murphy's office accused the Congressman of using paid staff members in his election campaign, no investigation was conducted that we are aware of. Despite a local outcry that former Republican Senator Rick Santorum was defrauding a local community by claiming residency, when he actually resided in Virginia, for the purposes of having the school district pay for his children's cyber schooling, we are aware of no investigation being conducted.

I cannot and do not opine on the merits of either case, but the fact that no investigation was undertaken stands out when Democrats in the Western District of Pennsylvania have been investigated in such a highly visible manner.

In the one instance where Republican State Representative Jeff Habay was prosecuted for using paid staffers for political campaigning, the U.S. Attorney took no action and let the local Democratic District Attorney prosecute the representative.

Allow me to now turn to certain other troubling aspects of the investigation and prosecution of Dr. Wecht that, in our view, further evidence that this prosecution may have involved more politics than justice.

The case opened with television coverage of search warrants being executed in Dr. Wecht's Coroner's office. These warrants were, in our view, general, overly broad, and clearly drafted as part of a Government fishing expedition. We would later learn that one of the FBI agents prominently depicted during the TV coverage of this search of a local political Democratic row office was one Bradley Orsini. It turns out that Agent Orsini of the FBI's Public Corruption Squad, the case agent for Dr. Wecht's case and the case against the former mayor, has an unseemly past. Agent Orsini, while in Newark, New Jersey, was investigated for years by the FBI's Office of Professional Responsibility ("OPR") and was found to have falsified official records and FBI Form 302s. He was reprimanded twice for falsification of evidence spanning years, demoted and suspended without pay for 30 days and placed on probation for one year before transferring to Pittsburgh in September 2004. According to the OPR's own conclusion, they were unable to determine the extent of the taint on all the evidence Orsini falsified. We recently learned in court proceedings that Orsini never signed another search warrant application for years following his reprimands. The first and only search warrant applications he has ever done since his reprimands were on April 7, 2005, when he executed three affidavits in applications for search warrants in the Dr. Wecht investigation. In the recent evidentiary hearings, Agent Orsini admitted he directly violated the Department of Justice's December 1996

Giglio Policy by not disclosing his past history of falsification of evidence to the prosecution. Department of Justice "Giglio Policy," see www.usdoj.gov/org/ag/readingroom/agmemo.htm. We further learned during recent hearings that, after these three search warrants were obtained, a prosecutorial decision was made to remove him from the warrant process and to attempt, unsuccessfully, to conceal his past from the defense and the public by filing for a protective order causing litigation that went all the way to the Third Circuit Court of Appeals in an effort to conceal his past. During that process, the Justice Department had advised three separate Courts, including the Court in the Wecht case, that the Government would not be sponsoring Agent Orsini as a witness. Despite all these irregularities, he remains the case agent on Dr. Wecht's case, and he was actually "promoted" to supervisor of an administrative unit effectively removing him from taking oaths following the disclosure of his past.

When the investigation of Dr. Wecht moved into the grand jury phase, it was not in secret as one would expect. There were frequent news reports concerning the investigation as it proceeded. The very public aspects of this case continued, culminating in a rambling news conference in January 2006 by Ms. Buchanan, where she touted the 84-count Indictment against Dr. Wecht. Interestingly, the press conference opened with a speech about the importance of public corruption cases, and how the Indictment restored faith and confidence in government officials. Ms. Buchanan then proclaimed that Dr. Wecht had provided unclaimed cadavers to a local Catholic university in exchange for lab space—an allegation which we will prove to be totally false and unfounded at trial, and which was never even discussed in pre-indictment audiences with Ms. Buchanan and her staff. Predictably, Dr. Wecht, the Democrat, scientist and educator, was forthwith labeled a "body snatcher" and a media feeding frenzy ensued. Ms.

Buchanan thus succeeded in the Department's apparent mission of casting Democrats in a negative light during the election year.

When the defense began to speak about problematical aspects of the case, Ms. Buchanan's office literally caused the specter of imprisonment to be held over counsels' heads, including immediately after we had fought successfully to expand the rights to speak by a Third Circuit decision indicating the public had a right to hear our views on the case. Ms. Buchanan's attempts to imprison us for commenting on her actions in the week before she made a behind-close-doors appearance to this Committee were given widespread publicity in local media outlets.

One might argue that Dr. Wecht is entitled to his day in court and he will have that day. But the public's perception of apparent politics at the Department of Justice will not be easily changed or remedied, no matter the outcome of his trial. Sally Kalson, a veteran columnist for the *Pittsburgh Post-Gazette*, wrote in her column of July 22, 2007, "An ambitious and enthusiastic Bush partisan like U.S. Attorney Mary Beth Buchanan might well consider Dr. Wecht a plum target, good for many brownie points at the White House." She further wrote, "The jury has yet to convene on Dr. Wecht, but the verdict on the Bush Administration is loud and clear: 100 percent political." This is the unfortunate manner in which this Department of Justice is viewed locally.

We should not allow any citizen of the United States to proceed to trial knowing that his prosecution may have been undertaken for political reasons as opposed to being done to serve the interests of justice. Sadly, that appears to have been so in the case against Dr. Wecht.

Congress may wish to consider reviewing and revising the relevant statutes which the current Administration used in a manner that is unprecedented and that seems well beyond what

Congress intended. The learned Judge Frank Easterbrook from the Seventh Circuit in United States v. Thompson, 484 F.3d 877 (7th Cir. 2007) recently expressed the growing misgivings of federal courts regarding overzealous applications of §§ 666 and 1346 while reversing a problematical conviction with political overtones:

> Sections 666 and 1346 have an open-ended quality that makes it possible for prosecutors to believe, and public employees to deny, that a crime has occurred, and for both sides to act in good faith with support in the case law. Courts can curtail some effects of statutory ambiguity but cannot deal with the source. This prosecution, which led to the conviction and imprisonment of a civil servant for conduct that, as far as this record shows, was designed to pursue the public interest as the employee understood it, may well induce Congress to take another look at the wisdom of enacting ambulatory criminal prohibitions. Haziness designed to avoid loopholes through which bad persons can wriggle can impose high costs on people the statute was not designed to catch.

Id. at 884.

We ask for Congress to take such a look on the basis of the facts involved in Dr. Wecht's prosecution.

Mr. SCOTT. Thank you, Mr. Thornburgh.

Professor Shields?

TESTIMONY OF DONALD SHIELDS, PROFESSOR, UNIVERSITY OF MISSOURI-ST. LOUIS, KANSAS CITY, MO

Mr. SHIELDS. Mr. Chairman, thank you for this opportunity.

First, you may be wondering how a communication professor comes before Congress with information about political abuses of the Justice Department, and I want to tell you that that is a valid question.

At the University of Minnesota where I received my Ph.D., Dr. Ernest Bormann developed a communication theory called symbolic convergence. Communication, including political communication, consists of dramatized messages that, when shared by other people, can turn into a rhetorical vision that catches up large groups of people into a similar symbolic reality.

Now symbolic reality may have nothing to do with actual reality. To cite a famous example, Barry Goldwater in 1964 was not actually a dangerous warmonger.

For three decades or more, I have studied and applied symbolic convergence theory to political messaging on a national level. With the collapse of Communism, a real question arose as to what would replace anti-Communism as the dominant rhetorical theme among American conservatives. Then when John Ashcroft became Attorney General, he announced a major DOJ initiative against public corruption. The study I report to you began as a means of tracking participation in this new neoconservative anti-corruption rhetorical vision.

To do the tracking, I compiled a list of the publicly reported Federal investigations and indictments of elected officials. I went beyond the national media to the local media, and that proved the key that unlocked Pandora's box. By accident, I made the discovery that the Justice Department, acting below the radar of the national media, was investigating and indicting local Democratic officials at a rate much higher, and local Republican officials at a rate much lower, than the percentage of each in the population of elected officials, and the DOJ continues to do so throughout 2007.

Nationally, the party affiliation of elected officials is roughly 50 percent Democrat, 41 percent Republican, and 9 percent Independent. These national percentages are closely reflected in my control group study of the investigation and arrests of 251 elected officials and candidates by nonfederal law enforcement at the state and local level. These investigation rates mirror the national percentages of 50 percent Democrat, 41 percent Republican, and 9 percent Independent-Other.

When I began my study of the U.S. attorneys, these were the results I anticipated, that is no significant difference between the observed percentages and the actual percentages.

To the contrary, however, when it comes to investigation and indictment of local officials by the DOJ, the numbers are staggeringly disproportionate: 80 percent Democrats, 14 percent Republicans, 6 percent Independent. That is 5.6 Democrats investigated for each Republican, 5.6 to 1, when the ratio should be 1.2 to 1, and that

is out of 820 investigations now, Mr. Chairman, not the 375 you referred to.

These numbers speak clearly that Federal investigations and prosecutions of local officials are highly disproportionate, so much so that the possibility of such a difference occurring by chance exceeds the .0001 level. That is less than one chance in 10,000.

So there is political bias—I call it political profiling—in such selective investigation and prosecution rates. The question that could not be answered until now concerns whether the bias has been a bias of individual prosecutors or a policy-driven bias. Both biases translate into the selective investigation and prosecution, however.

And the numbers do not lie. They represent real people with real faces, people like Puerto Rico's Governor Anibal Vila; Alabama's former Governor Don Siegelman; Allegheny County, Pennsylvania's former coroner Cyril Wecht; Michigan's former attorney general candidate Jeffrey Fieger; Michigan's Carl Marlinga, a prosecutor and congressional candidate; or Mississippi Supreme Court Justice Oliver Diaz, Jr.

Each of these investigations and indictments were suspect. The anecdotal stories and facts behind these cases need to be told. They and others like them show both the tenacity and the zeal with which the DOJ has selectively investigated and selectively prosecuted Democrats, elected officials and candidates.

Other recent revelations concerning the firing of a number of U.S. attorneys for not prosecuting Democrats or for prosecuting Republicans would seem to indicate that the political profiling is very much a policy-driven bias coming directly from the Office of the Attorney General and perhaps even the White House.

Regardless of the origin of political profiling and regardless of the party being targeted, Congress, I think, has the obligation to protect against this abuse. Because the powers of Federal law enforcement are so great and the political abuse of those powers so unspeakably dangerous, Congress must act. My written statement provides several suggestions for Congress to consider.

[The prepared statement of Mr. Shields follows:]

An Empirical Examination of the Political Profiling of Elected Officials: A Report on Selective Investigations and/or Indictments by the DOJ's U. S. Attorneys under Attorneys General Ashcroft and Gonzales

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A written statement of my invited testimony before U.S. House of Representatives Judiciary Committee's Joint Hearing by the Subcommittee on Crime, Terrorism, and Homeland Security and Subcommittee on Commercial and Administrative Law.

A Joint Hearing on: "Allegations of Selective Prosecution: The Erosion of Public Confidence in our Federal Justice System."

Tuesday, October 23, 2007, 2141, Rayburn House Office Building.

(A Microsoft Word Document).

An Empirical Examination of the Political Profiling of Elected Officials: A Report on Selective Investigations and/or Indictments by the DOJ's U. S. Attorneys under Attorneys General Ashcroft and Gonzales

Donald C. Shields, Ph.D.

> *The advantage of a federal prosecution is that prosecutors are immune from petty party politics . . . . State prosecutions that are the result of partisan politics are suspect in the minds of American jurors who deliberate not only upon the facts but with respect to issues of fairness.*[1]

So goes the popular bromide or notion (I call the whole statement a *rhetorical fantasy*) depicting the lack of bias – and at the same time implying the superiority – of federal investigation and prosecution when compared to non-federal law enforcement. I find it ironic that at this particular time anyone can regard U.S. Attorneys—our nation's "chief law-enforcement officers"—as *independent* or, in Dreyer's words, "immune from petty party politics."[2]

Irony appears an apt descriptor given the revelations provided by my recent interim report of a study on federal political profiling of elected Democrat officials and candidates[3] and the concurrent disclosures about partisan politics surrounding the firings of the "Gonzales 8" (some say 15) – as revealed through U.S. Senate and House Judiciary Committee hearings, witness testimony, and released public documents.[4] The communal significance of both this important issue generally, and the political profiling piece in particular, is evidenced by the extensive public discussion accorded to it in the press,[5] the Congress,[6] other media,[7] and even by Administration apologists.[8] With the electronic publication of the "Political Profiling of Elected Democratic Officials" in *ePluribus Media* early this year a number of questions arose and I responded to them.[9] (See http://69.9.178.136/columns/2007/20070212_political_profiling.html.)

I began writing this current analysis upon the announcement of the resignation of Attorney General Alberto Gonzales.[10] President Bush, as he discussed that resignation, described Gonzales – perhaps more tellingly than he realized – as an AG who "aggressively and successfully pursued public corruption."[11] Thus, Gonzales' resignation again provided an opportunity to interrupt this 8-year longitudinal study of the DOJ's and U.S. Attorneys' public corruption initiative during the Bush Administration.[12]

In this written statement, I will:

(1) Report on a re-examination of the previously reported data;

(2) Update and expand that data through September 16, 2007 — the effective resignation-date of Attorney General Gonzales;

(3) Introduce a new control group comparison;

(4) Provide some new ways of looking at the data; and

(5) Reiterate and expand on the harms of "politicization" and flesh-out my earlier proposed solutions.

A Look Back at the Original Data

The genesis of the longitudinal study flowed from the use of symbolic convergence theory[13] to explain the unique merging of aspects of the religious-conservative and neo-conservative rhetorical visions (that is, composite rhetorical dramas that catch up large groups of people in a similar symbolic reality) held by then Attorney General John Ashcroft in his role as the nation's chief law enforcement officer.[14] Serendipitously, I stumbled across the possibility of political profiling while analyzing the emergence of the preemptive war plot line of those who adhere to the neo-conservative rhetorical vision to replace the cold war rhetorical vision and its longstanding Truman Doctrine of containment of communism.[15] As Ashcroft put that preemptive plot line in discussing an array of criminal acts, including public corruption: "We must continue to use every law enforcement tactic and prosecutorial tool we can . . . [to] pursue and prosecute."[16] As Baker has noted, "The Justice Department's *preventive approach* marked an important shift from its historic priorities of investigation and prosecution" of crime – no longer would the DOJ wait for a crime to occur or a terrorist threat to emerge; rather, it would seek to prevent them.[17] Thus, the study began as a means of verifying if AG Ashcroft successfully gained converts to his new, neo-public corruption, rhetorical vision with its explicit central plot line of prevention of corruption through assiduous diligence on the part of the Offices of the U.S. Attorneys.

I define *political profiling* as the selective investigation of those public officials who hold elective office at the state and local level, primarily. The study was conceived and conducted as a political communication study that sought to link up the public rhetoric of AG Ashcroft and the behavior of the ninety-three U.S. attorneys that reported to him. This longitudinal study is *not* a legal study. It does *not* purport to track the actual case history of any individual other than as it may have been reported in a news story or federal press release. Rather, it is a study of newspaper and television newscast stories that report U.S Attorney-led political corruption investigations. The focus is not on the legal effects of any investigation, but on the political effects of these investigations as seen in local news accounts. Consequently, my use of the word *investigate* is a layperson's use — that is, someone was subpoenaed for records, or to testify, or arrested, or indicted for allegedly perpetrating some federal offense. That does *not* mean they committed a crime; nor does it mean that they were necessarily a named *target* as the FBI employs that term, nor does it mean that they didn't fully cooperate with the investigation. Indeed, it is safe to assume that anyone whose name appears in some news account as being investigated cooperated fully, lest they would in all likelihood be charged with obstruction of justice. I viewed the news stories in the same manner that a typical voter might view them because I was interested in the political effects of such publicly reported investigations.

The resultant findings of this population study of news stories about federal investigations of elected officials made a statistical prediction that political profiling was occurring either by the over-investigation of Democrats, or the under-investigation of Republicans and Independents, or a combination of both. Concurrent reports depicting the content of the E-mail releases from the White House and the DOJ,

combined with the disclosures surrounding the "Gonzales-Eight," provided direct evidence to support the validity of such a prediction.[18]

The February 18, 2007 *ePluribus Media* electronic publication reported 375 investigations/and or indictments of elected officials and cross-tabulated them by political affiliation. This data had actually been collected and summarized and presented in two previous academic papers.[19] Those academic papers set forth the longitudinal study's design and method. The data collection procedure entailed using the Google search engine to retrieve electronic accounts of federal grand jury investigations. Data retrieval began early in the Spring of 2004 using the following search strategies and terms:

1) 1,980 hits containing the words "federal grand jury investigation" in quotations;

2) 722 hits containing the words "federal grand jury investigation" AND "elected";

3) Initially 141 hits containing "federal public corruption investigation" AND "elected"; and

4) A census search of extant press releases periodically made available (although often only temporarily) on-line at the web-sites of most, but not all, U.S. Attorneys' Offices.

Across the years, the number of hits with each of these search strategies has increased exponentially. Nonetheless, this procedure has been followed consistently and supplemented with the use of other search engines such as Yahoo, Microsoft, and Clusty. Also, Google News alerts now automatically email me news reports of current investigations using the phrase "federal grand jury investigation elected."

These procedures have allowed the identification of the named elected officials – as reported by either the press and electronic media or the press releases published by each U.S. Attorney's Office – as under federal investigation and/or indictment. Upon retrieving an elected official's name, his or her political party affiliation was confirmed by entering the official's name in another Google Internet search and reviewing the resultant hits until his or her party affiliation surfaced.

Updated Data with Control Group Comparison

The study's central hypothesis is: *That elected officials' party affiliation (Democrat, Republican, and Independent/other) would be distributed in a fashion equal to the party affiliation of the population of elected officials as a whole*. The Eagleton Institute of Politics at Rutgers University provided the best available normative population data. They reported in a 2002 survey of 17,023 elected officials in the U.S. (Congress, the states, state legislatures, and local governments) as responding to *Q-29, Do you consider yourself a Democrat, Republican, Independent, or something else?*, as follows: 50 percent reported being Democrat, 41 percent reported being Republican, and 9 percent reported being Independent or Other.[20] Hence, I hypothesized that the anticipated sample of investigations or indictments of elected officials would mirror these available normative percentages regarding party affiliation.

As indicated in **Tables 1 and 2,** the Internet search strategies enabled the uncovering of 820 publicly reported grand jury investigations and/or indictments of elected officials or candidates by the DOJ's U.S. Attorneys from January of 2001 through September 16, 2007. [See **Appendix A** for the investigations occurring by alphabetical order of the state zip code abbreviations.] A summary of those investigations in a time line may be found in **Table** 1. Again, I hypothesized that the party affiliations of the officials and candidates investigated would match the normative data. However, as **Table 2** shows, the sample includes 631 (76.95 percent) investigations of Democrats, 142 (17.32 percent) investigations of Republicans, and 47 (5.73 percent) investigations of Independents/Other office holders or candidates.

The disparity in the proportions of the actual sample between investigation and/or indictments of Democrats in relation to Republicans is again statistically significant beyond the .0001 level and could have occurred by chance less than one in 10,000 samplings.[21]

Nonetheless, important questions remain:

(1) How good are these results?

(2) Are Democrats intrinsically more corrupt than Republicans, thereby explaining the disparity?; and its corollary,

(3) Is the disparity in investigations common to all Presidential Administrations or unique to this President's Administration?

As noted elsewhere,[22] we may never know the direct answer to these three questions because the Department of Justice won't reveal lists of past investigations, and the Internet search procedures used in this study were unavailable at the time of past Administrations. Moreover, not all newspapers have retroactive on-line archives, nor does any single newspaper report all cases of grand jury investigations/indictments of elected officials and candidates from across the country. Then, too, the news archives that do exist prove quite expensive to research. Only the DOJ can, but won't, provide actual detailed information on every investigation. Indeed, rather than publicly providing such information, the DOJ has engaged in the purging of previously public information from its U.S. Attorney web-sites making research more difficult. Until such time as the DOJ chooses to release the data, researchers can only turn to the public record to track investigations.

Nonetheless, if one did demonstrate that selective prosecution also occurred in previous administrations that would only indicate that the problem was a longstanding institutional one (the roster of the career civil servants at DOJ were individually and collectively biased), rather than a political problem of the Bush Administration as claimed here. The political problem may be easier to eliminate, but either problem needs Congressional attention.

But, I digress. Suffice it to say that there are several good ways to answer the questions about the study, indirectly. First, I'll answer the ***quality of the results*** question. Because this is a longitudinal study tracking publicly reported investigations and/or indictments across the entirety of the Bush Presidency, the various interim data analysis reports may be compared for stability of the findings. Across the years, I've reported parts of the data three times publicly, replicated the study since March 2007 (unreported until now), and here am reporting the full 820 U.S. Attorney investigations. One can view the stability of the findings by turning to **Table 3**. The data in **Table 3** indicate that the percentages reported with each progressive analysis fell within the margin of error for the sample as a whole at the 95 percent confidence level.

In the *ePluribus Media* sample of 375 publicly reported investigations and/or indictments, for example, I originally used the statewide and federal elected officials and candidates as a control group. I found the lack of disproportion – that is the lack of statistical significance in the variation of the percentages of federal and statewide elected officials investigated in relation to the normative percentages – to be good evidence that the "on-the-radar" surveillance of the national and state-wide press may have prevented any disparity from occurring.

However, the larger sample reported here no longer warrants that conclusion. Although the Bush/Ashcroft/Gonzales U.S. Attorneys did not investigate the federal and statewide office-holders and candidates at the same rate as local politicians as the sample expanded, the difference in the percentage of Democrats, Republicans, and Independent/others investigated is nonetheless statistically significant in the 820 sample (See Table 2). I attribute this finding – of statistical significance in the difference in rate of investigation of such officials in the expanded sample – to an increased number of investigations of state-wide and national political officials and candidates during the 2006 election cycle. Given that I could not continue to use the federal and statewide elected officials and candidates as a control group (as I did in the *ePluribus Media* report of February 18, 2007), I found it necessary to set up a new control group to help answer the ***soundness question***. (See **Appendix B** for the control group data, State, County, or City Grand Jury Investigations of Public Corruption of Elected Officials by non-federal law enforcement).

In April of this year I began to study the use of local (non-federal) grand juries in investigating public corruption cases as led by local city attorneys, county district attorneys and prosecutors, and state attorneys general. The data analysis for this non-federal law enforcement study puts the quality of the original federal data in a new light as it also evidences its soundness.

As can be seen by the data contained in **Table 5**, there is no significant difference in the party affiliations of elected officials investigated by local grand juries, city and county district attorneys, and state attorneys general. In the short time frame available to me, my Google searches of press reports of local and state-led grand jury investigations of public corruption of elected officials during the period 2001 through September 16, 2007 revealed investigations of some 251 elected officials. Of those, 126 were investigations of Democrats, 103 were of Republicans, and 23 were of Independent/Other elected officials.

The Chi-square analysis of this non-federal law enforcement data shows no difference between the observed frequencies in the sample and the expected distribution of 50 percent Democrat, 41 percent Republican, and 9 percent Independent/other. As a result, this non-federal law enforcement data directly refutes the bromide that began this report – namely that federal law enforcement investigations and prosecutions are less politically biased than non-federal law enforcement investigations. Indeed, for the nation as a whole, just the opposite is true.

A comparison of the federal law enforcement and non-federal law enforcement data shows that the Bush Administration's U.S. Attorneys are highly politicized in their nationwide investigations and indictments while there is no such bias present nationwide in the investigations and indictments by non-federal prosecutors over the same time frame. While an individual local prosecutor or state attorney general may seemingly have an axe to grind, nationwide such axes cancel each other out in the realm of non-federal law enforcement. At the federal level such "canceling" is absent. Local law enforcement's grand jury investigations of elected officials and candidates mirror the normative data by party affiliation. Again, here is confirmation that the anomaly present in the U.S. Attorneys' investigations and/or indictments of elected officials and candidates represents political profiling, that is, selective investigation writ large. Such data lays bare the selective investigations engaged in by

the U.S. Attorneys and refutes the DOJ's asserted response to this study: "The U.S. Attorneys are professionals and pay no attention to the political affiliation of whom we investigate."

Two New Ways of Looking at the Data

Much has been made by critics of the initial *ePluribus Media* report that Democrats exceed Republicans in the findings because Democrats are in power in the big cities and that's where the DOJ conducts its investigations. As I have replied elsewhere, such a point might be valid if the U.S. Attorneys sole responsibility for law enforcement lay within big cities. However, this is not the case. Most of the 93 U.S. Attorney Districts comprise whole states or major parts of a state and they are responsible for federal law enforcement throughout their districts.

Aside from the District of Columbia, each U.S. Attorney District includes many suburbs, rural towns and cities, and rural counties. It is in just such places where the critics argue that Republicans live. While the critics appear to believe that the U.S. Attorneys don't catch elected officials in such places (a point about which they are mistaken), its clear from a perusal of the various U.S. Attorney web-sites that the U.S. Attorney-led investigators manage to find plenty of drug dealers, embezzlers, illegal aliens, mortgage fraud scammers, fire arms violators, and so forth, in these rural counties. Such cases demonstrate quite clearly that the U.S. Attorneys can and do investigate crime in the suburbs and rural areas; yet the data from this study shows that they do not investigate Republicans when they go after public corruption. As we shall see later, they overwhelmingly investigate and/or indict Democrats.

When the above points are made, but presented in the absence of actual data, the critics appear loathe to accept them. Now, with the increased sample size of U.S. Attorney-led investigations, it is possible to test the critic's view empirically by way of a data-based response.

Clark in 2006 reported the third national survey of elected county commissioners for the National Association of Counties (NACO). He reported the party affiliation of county elected officials across America as 46 percent Republican, 13 percent Independent, and 41 percent Democrat and noted that, based upon a 95 percent confidence level those distributions are accurate to within 4 percent of the true distribution of county commissioners.[23] Clark's research allowed me to look at the investigations of county commissioners in my sample and compare it to his known distribution of county commissioners across the country, much as I had used the Eagleton Institute's distribution to analyze all U.S. Attorney-led federal investigations. See **Table 5**.

As the data in Table 5 indicates, there are 71 county commissioners (excluding County Executives) in the data base of 820 U.S. Attorney-led investigations. Of those 71, seven are Republicans, two are Independent/Others, and 62 are Democrats. Thus, across America, which is comprised of predominantly rural and suburban counties (67 percent according to NACO) the U.S. Attorneys investigated Democrats over Republican commissioners at a rate of 8.86 to one – even higher than the other ratios presented in **Tables 2, 3 & 4**. Interestingly, at the same time, the U.S. Attorneys led investigations of 23 County Executives (sometimes called Judge Executive, Presiding Judge, or County Mayor) of which 20 (87 percent) were Democrat and only 3 (13.0 percent) were Republican.

The second new way of looking at the data concerns a comparison of the AG Ashcroft years versus AG Gonzales years. The resignation of Alberto Gonzales makes this comparison possible sooner than expected. This comparison will stick to the data concerning U.S. Attorney-led

investigations by the two AG's and not compare them on hires and firings or maintenance or non-maintenance of office moral due to their manifest contrasting management styles.

As the data in **Table 6** indicates, AG Ashcroft's U.S. Attorneys investigated and/or indicted elected officials and candidates at a rate of 5.33 Democrats to one Republican during his 48 plus months in office. This compares with AG Gonzales' U.S. Attorneys investigating and/or indicting elected officials and candidates at a rate of 3.6 Democrats to every Republican during his 31-plus months in office. This would seem that the U.S. Attorneys office lost some of their zeal for investigating Democrats under AG Gonzales. But, I would caution the reader to withhold judgment.

Recall that there was an apparent U.S Attorney purge throughout 2006 culminating in the December Gonzales 8 Firings. Thus the data warrants a closer examination of the data for 2007. Recall from the data presented as **Table 3**, that the Gonzales-led U.S. Attorneys increased their investigations and/or indictments of Democrats to 77.03 percent during 2007, which compares to Ashcroft's average of 80.70 per-cent. By the same token, 15.13 percent of the Ashcroft-led investigations were of Republicans whereas 20.06 of the Gonzales-led investigations were of Republicans. It is this Gonzales decrease in investigations of Democrats and the Gonzales increase in investigations of Republicans that would seem to provide the answer to the "why" behind the U.S. Attorney purges. I would stress that the Gonzales-led investigations of Democrats were up in 2007 to 77.03 percent Democrats (an increase of 4.98 percent from his overall 31.5 month average) and the Gonzales-led investigations of Republicans were down to 17.32 percent (a decrease of 2.74 percent from his 31.5 average).

How Did We Get in This Sorry State and What Can Be Done to Correct It?

As a result of the politicization of the DOJ there has been an erosion of public confidence in our federal justice system. How did all this come about? The following tactics contributed to the politicization. First, Attorney General Ashcroft suspended the longstanding guidelines against U.S. Attorneys violating the Hatch Act (doing nothing to interfere in the outcome of a political campaign) by allowing investigations and indictments to occur during campaign season. Second, AG Ashcroft altered the mission of DOJ by adopting the neo-conservative plot line of pre-emptive attack in foreign policy as he changed the central plot line of the DOJ from investigation and prosecution to prevention of corruption. Third, he continued the slow erosion of the safeguards provided in the Bill of Rights by sanctioning the U.S. Attorneys to treat the Democratic elected officials and candidates at the local level, and those who contribute to them, as *an organized illegal conspiracy* requiring Rico-like investigative tactics, Patriot Act time-of-war surveillance techniques, and entrapment-like stings with DOJ agents bribing officials and acting as fake candidates to buy votes. Finally, AGs Ashcroft and Gonzales elevated many non-corruption transgressions to federal crimes by usurping cases that traditionally would have been handled as state cases, such as campaign ethics issues.

What this demonstrates is that if federal investigators would investigate Republicans with the same enthusiasm with which they appear to investigate Democrats, then the bias that currently appears in the federal arena would not exist. Alas, because the data demonstrates that bias does exist, I expect it to continue unless structural controls are enacted.

The question is often asked, "Who cares? Those asking the question quickly point out that the majority of investigations lead to indictments and most indictments lead to guilty pleas or convictions. My answer to this is two-fold:

a) Not all investigations lead to indictments, but all investigations lead to embarrassment and therefore have a negative political impact on the credibility of the official being investigated.

b) There is an immense cost to defending against even baseless indictments. The cost of defense bankrupts the innocent and guilty alike and discourages political participation in government.

I would remind all of the 'Scooter' Libby Syndrome: A politically generated investigation may lead to no criminal charges being filed for the crime that is being publicly investigated. Rather, peripheral figures find themselves caught up in foolish "perjury" traps created by the investigation that was proven (because it did not warrant indictment) as without merit in the first place. Such convictions – for crimes that could not have existed but for the original investigation itself – are then used as a "bootstrap" justification for the original investigation by the U.S. Attorneys and other DOJ officials. What political profiling does in such cases is substitute one form of public corruption, selective investigation, for another, pseudo perjury charges.

I would also remind all that numbers are important because they remove arguments from the realm of the anecdotal and the emotional, from the realm of fantasy as reality, from the assertion of we did not to the facts of yes you did. Numbers have no memory and they have no prejudice. Numbers have no political party.

The numbers in this study speak for themselves. They speak clearly that federal investigations and/or indictments of local officials are highly disproportionate by political party. Because the possibility of such disproportion occurring by chance amounts to 10,000 to one or greater, this is clear proof of a political bias, a bias of selective investigations and prosecutions.

Given the strength of the evidence of these numbers, the only remaining question – and one that could not be answered until now – has been whether or not the bias is institutional (that is, initiated by the innate prejudices of the professional prosecutors) or policy driven. Political profiling as selective investigation – like racial profiling – can be either institutional or policy driven. Information that has come to light concerning the firing of nine U.S. Attorneys (actually 15) – and especially information indicating that the reason for replacing them related directly to their refusal to prosecute Democrats with sufficient enthusiasm or their decisions to prosecute Republicans – supports the conclusion that the demonstrated political profiling bias is policy driven.

What can be done about the DOJ's selective investigation (and therefore selective prosecution) – political profiling – of elected officials? The fact that the political profiling enumerated in this investigation is a policy driven bias (regardless of its political implications for office holders and aspirants), may bode well for fashioning a remedy. It appears harder to deal with the institutional bias of professional prosecutors. Congress can more readily make rules to reduce policy driven bias.

The first necessity is increased transparency. Transparency may not be sufficient alone, but it is the irreplaceable first step. The Justice Department needs to be required to maintain lists of those investigated and prosecuted identified by political party affiliation whenever the investigation involves or is related to an elected official (serving or recently retired) or candidate for elected public office. It is disingenuous for

the DOJ to maintain that it does not have such information readily available to its investigating officers. If investigations are on-going then arrangements could be made to redact names or other identifying information for a reasonable time to allow the completion of such. In any instance, however, if a federal grand jury or other federal investigation has been reported by the local press there should be no justification for the DOJ's failure to report the same to Congress.

And to ensure transparency, the DOJ should be required to submit to Congress an annual, stand-alone report listing each such political corruption investigation and/or indictment and the party affiliation of the elected official, the jurisdiction in which it occurred, and the geographic area as urban, suburban, or rural. This report should be in sufficient detail that the Congressional oversight committees and agencies and independent researchers and journalists can verify its accuracy.

While transparency is necessary, it may not be sufficient to guarantee against political abuse. The Congress may wish to examine additional safeguards against political profiling in the investigation and prosecution of elected officials and candidates:

1. Allow a person being investigated the right to appear before and to submit evidence to a grand jury without the consent of the U.S. Attorney.

2. Allow special rules of broad discovery – at least as broad as that which is now available in federal civil cases – in those cases involving elected officials or candidates. This would reduce the number of marginal or frivolous indictments.

3. If an indicted elected or former elected official or candidate raises issues of political profiling and selective prosecution, require the Court to provide discovery and hearing on this issue.

4. Require the federal prosecutors to disclose all communications and proffers of any prosecution witness.

5. Make mandatory the payment of all defense attorney's fees and costs for an elected official, former elected official, or candidate who has been found <u>not</u> guilty in a public corruption case, or any other case where the issue of political profiling and selective prosecution has been raised.

6. Prohibit U.S. Attorneys or Assistant U.S. Attorneys from holding press conferences to announce indictments of charged elected officials and candidates, so as to not prejudice the jury pool as well as voters. A written press release mailed or emailed from the Office of the U.S. Attorney to media outlets should be sufficient.

7. Toughen the federal standards for proving conspiracy with cases involving elected officials and candidates; treat all campaign spending violations as non-criminal referrals to the federal election commission; and restrict the practice of FBI entrapment of elected officials and candidates through the use of bribery stings, the setting up of phony companies soliciting business, the running of phony political candidates, and so forth.

8. Re-instate and enforce the longstanding prohibition (based on the Hatch Act) against employees of the DOJ interfering in political campaigns by bringing indictments and leaking investigations; and enforce the strict prohibitions against leaking information on investigations prior to indictment.

9. Limit the ability of the U.S. Attorneys to harass elected officials and candidates through their use of protracted, multi-year investigations and seemingly limitless serial investigations).

10. Control the practice of "grand jury shopping" by limiting a given or single investigation to the initial grand jury that heard it; and require the U.S. Attorneys to publicize that "No Bill" has been brought if they could not achieve an indictment with that initial grand jury, as well as disclose in that "No Bill" the nature of the investigation that the grand jury found without merit so that that investigation cannot be "shopped" to a new grand jury.

Conclusion

As I write, the Bush Administration nears its end. There are some 14-plus months left in the Bush Presidency. It is my hope that as I complete this longitudinal study, remedies will be in place so that I will see the publicly reported instances of the U.S. Attorney-led federal investigations and/or prosecutions begin to mirror the normative data during those 14-plus months.

This is an area in which the Congress must act and it should be in the best interests of Republicans, Democrats, and Independents to see that reforms are enacted. If Congress does not act, I fear that the erosion of public confidence in our federal Judicial System, and the Department of Justice, in particular, will continue.

Worse, If Congress does not act, I fear that good, capable citizens will decide not to participate in government, lest they be the object of selective investigation and political profiling. That is a prospect most dangerous to our Republic.

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Endnotes

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[5] For example, see Paul Krugman (2007, March 9). "The Department of Injustice." *The New York Times*, Op-Ed section. Available on-line at URL: http://select.nytimes.com/2007/03/09/opinion/09krugman.html?_r=1&hp&oref=slogin. Also see, NY Times (2007, May 24). "Why This Scandal Matters." [Editorial]. *The New York Times*, Op-Ed section.

[6] See also Kenneth Jost (2007, June 22), "Are Public Corruption Probes Politically Motivated? Study claims Justice Department uses 'political profiling'," *CQ Researcher, 17*, 563-564 (Both print and on-line available).

[7] For example, Steven Colbert's interview with Dr. Donald Shields (2007, March 13). Available on-line at: http://www.ifilm.com/episode/19767?startWith=2832287. Or see, Duke Falconer with others (2007, April 11). "Pair-a-dice...Guam's DOJ Gamble, the Ante in the U.S. Attorneys Firings. *ePluribus Media*. Available on-line at URL: http://www.epluribusmedia.org/features/2007/us_attorney_fred_black.html.

[8] See Michael Smerconish (2007, February 18). "Headstrong/Poor Way to Defend Fumo," [Currents section] *Philadelphia Inquirer, XML*. Also catch my reply to Smerconish, at http://stubbornfacts.us/politics/partisanship/more_debunking_of_the_political_profiling_study#comment-5071. Tom Finkel (2007, April 4). "No news is good news. The questions Steven Colbert didn't ask. *Riverfront Times* (St. Louis, MO). Available at URL: http://www.riverfronttimes.com/2007-04-04/news/no-news-is-good-news/.

[9] See Roxy Caraway (2007, April 27), "An Interview with Dr. Donald Shields," *ePluribus Media*. Available at URL: http://www.epluribusmedia.org/columns/2/007/20070212_political_profiling.html

[10] Monday, August 27, 2007, MSNBC telecast, 9:30 a.m., CDT. His resignation became effective 9/16/2007.

[11] George W. Bush (2007, August 27). "President Bush Discusses Resignation of Attorney General Alberto Gonzales." [White House release.] See URL: http://www.whitehouse.gov/news/releases/2007/08/2007/0827.html.

[12] Public corruption investigations have now become the number one criminal investigative priority of the DOJ's Federal Bureau of Investigation. See, for example, Office of the Inspector General's Report 05-37, dated September 2005 entitled, *The External Effects of the Federal Bureau of Investigation's Reprioritization Efforts (Redacted for Public Release)*, especially Chapter 10, Public Corruption. Available at URL: http://www.usdoj.gov/oig/reports/FBI/a0537/chapter10.htm. Or see, Robert S. Mueller, III (2006, May 11). "Remarks Prepared for Delivery by Robert S. Mueller, III, Director, Federal Bureau of Investigation, City Club of San Diego." San Diego, CA. Mueller states: " Today, however, I am going to focus on another threat that has hit home here and in many other communities around the country—public corruption. . . . Since 9/11, we have had to prioritize how we use our resources, placing our national security programs first. But at the same time, we made public corruption our top criminal investigative priority." It all began with AG John Ashcroft's speeches, given early and often during his term, prompting pre-emptive action against the scourge of public corruption. See for example, John Ashcroft (2001, May 31). "Attorney General Prepared Remarks, The Hague, Netherlands." Available on-line at: http://www.usdoj.gov/archives/ag/speeches/2001/0531thehague.htm. See also, John Ashcroft (2004, January 26). "Press Conference with U.S. Attorney General John Ashcroft, Austrian Interior Minister Ernst Strasser." Vienna, Austria, Austrian Interior Ministry. Available on line at URL: http://www.usembassy.at/en/policy/ashcroft.htm. See also, John Ashcroft (2004, January 22). Prepared Remarks of Attorney General John Ashcroft World Economic Forum." Davos, Switzerland. Available on line at URL: http://usdoj.gov/archives/ag/speeches/2004/12204agweb.htm. See also, John Ashcroft (2004, May 11). "Transcript of the G8 Justice and Home Affairs Ministerial Press Conference." Washington, DC. Available on line at URL: http://www.usdoj.gov/criminal/cybercrime/ashcroftstatement051104.htm. [Retrieved 9/28/2005].

[13] Donald C. Shields writes: "*Symbolic Convergence Theory* (*SCT*), a general communication theory, explains the emergence of a common symbolic consciousness — one that contains shared meanings, emotions, values, and motives for human action – among participants in a small group, organization, or other rhetorical community. SCT as developed by Ernest Bormann, John Cragan, and Donald Shields, among others, is a message-centered theory developed through the observation of symbolic facts in communication. First, observers noted the sharing of dramatized messages, called fantasy themes, within small group communication, then mediated communication, and finally among the communicating memberships of organizations and other large publics. Within each context, researchers found that people shared, reiterated, and wove fantasy themes to form a larger, more complex view of reality called a *rhetorical vision* (e.g., the Cold War, Glasnost, Global Warming, or Neo-Conservatism). *A rhetorical vision* contains many fantasy themes that depict heroes and villains in dramatic action within a scene. People create and reproduce fantasy themes in conversations – the hallmark of human communication. Fantasy themes often ignite, catch up others, and chain-out from person-to-person, group-to-group, and community-to-community. People share rhetorical fantasies to account for human experience, come to repeat them, embellish them, and accept them as their view of reality." Excerpted from Donald C. Shields (in press), "Symbolic Convergence Theory," in Wolfgang Donsbach, ED, *International Encyclopedia of Communication*, England: Blackwell Publishing and the International Communication Association.

[14] For full explanations of symbolic convergence theory and some applications see the following trilogy: John F. Cragan and Donald C. Shields, *Applied Communication Research: A Dramatistic Approach* (Prospect Heights, IL: 1981); their *Applied Communication Research: Bormann, Burke, and Fisher* (Creskill, NJ: Hampton Press and the National Communication Association, 1995); and their *Understanding Communication Theory: The Communicative Forces for Human Action* (Boston, MA: Allyn and Bacon, 1998). For referced academic journal explanations and applications see: Ernest G. Bormann, John F. Cragan, and Donald C. Shields (2001), Three Decades of Developing, Grounding, and Using Symbolic Convergence Theory," in W. B. Gudykunst (Ed.), *Communication Yearbook 25*, pp. 271-313, Mahwah, NJ: Erlbaum and the International Communication Association; John F. Cragan and Donald C. Shields (1999), "Translating Scholarship into Practice: Communication Studies Reflecting the Value of Theory-based Research to Everyday Life," *Journal of Applied Communication Research, 27*, pp. 92-106; Rita Csapó-Sweet and Donald C. Shields (2000), "Explicating the Saga Component of Symbolic Convergence Theory: The Case of Serbia's Radio B92 in Cyberspace," *Critical Studies in Mass Communication, 17*, 318-333; Donald C. Shields (2000), "Symbolic Convergence and Special communication Theories: Sensing and Examining Dis/enchantment with the Theoretical Robustness of Critical Autoethnography," *Communication Monographs, 67*, 392-421; and Donald C. Shields and C. Thomas Preston, Jr., (2007), "The urban debate league rhetorical vision: Empowering marginalized voices for leadership and activism," in Larry Frey and Keith Carragee (Eds.), *Communication activism Volume 1: Communication for social change*. (pp. 157-193). Cresskill, NJ: Hampton Press, 2007).

[15] See Ernest G. Bormann, John F. Cragan, and Donald C. Shields (1996), "An Expansion of the Rhetorical Vision Concept of Symbolic Convergence Theory: The Cold War Paradigm Case," *Communication Monograph: 63*, 1-28; Donald C. Shields (1990, June), *Perestroika, Glasnost and Communication Equality in the Soviet Union: Reporting Eastern European Democratization in the United States*," presented to the International Communication Association, Dublin, Ireland; John F. Cragan and Donald C. Shields (1977), "Foreign Policy Communication Dramas: How Mediated Rhetoric Played in Peoria in Campaign '76,". *Quarterly Journa of Speech, 63*, 274-289; John F. Cragan and Donald C. Shields (1980), "Communication in American politics: Symbols without Substance. *USA Today: The Journal of the Society for the Advancement of Education, 108*(2420), 60-62.

[16] John Ashcroft (2004, July 20). Prepared Remarks of Attorney General John Ashcroft OCDETF Leadership Conference. Washington, DC. Available at URL: http://www.usdoj.gov/archive/ag/speeches/2004/72004_ag.htm.

[17] Nancy V. Baker (2006). General Ashcroft: Attorney at War. Lawrence, KS: University of Kansas Press.

[18] Margaret Talev and Marisa Taylor (2007, March 10). "Rove was asked to fire U.S. attorney," McClatchey Newspapers, Washington Bureau; William Yardley (2007, March 21). "Gonzales bowed to politics, a former U.S. Attorney says," *The NY Times*. http://www.nytimes.com/2007/03/21/us/politics/21mckay.html.

[19] See Shields, Donald C., & Cragan, John F. (2005, April 2). *The Political Profiling of Elected Democratic Officials: A Tale of Two Rhetorical Visions.* Presented at the annual meeting of the Southern States Communication Association, "Top 4 paper" in political communication, Baton Rouge, LA (See http://ssca.net/files/conventions/2005/convention-programs.pdf); and Donald C. Shields and John F. Cragan (2005, November 20), *Blending religious fundamentalist and neoconservative rhetorical visions: Policing morality through diligent law enforcement or the political profiling of elected officials?* Paper presented at the annual meeting of the National Communication Association, Boston, MA. Program specifics available at URL: http://www.natcom.org/nca/files/ecl.libraryFiles/FILENAME/000000000609/Sunday20.doc. The study was first reported by the journalist David Roy (10/24/2004), "Study Identifies Political Profiling," *Daily Vidette*. See http://media.www.dailyvidette.com/media/storage/paper420/news/2004/10/25/News/Study.Identifies.Political.Profiling-779002.shtml?sourcedomain www.dailyvidette.com&MIIHost media.collegepublisher.com.

[20] Ruth B. Mandel and Katherine E. Kleeman (2002). *Political Generation Next: America's Young Elected Leaders.* Rutgers University. See, Q-29, p. 41, at URL: http://www.eagleton.rutgers.edu/YELP/YELPFullReport.pdf.

[21] Chi-square value of 240.98 at 2df. Significant difference beyond the .0001 level. Computed using Khristopher J. Preacher (2001, April). "Calculation for the chi-square test: An interactive calculation tool for chi-square tests of goodness of fit and independence" [Computer software]. Available from http://www.quantpsy.org. Calculator also available at URL: http://www.psych.ku.edu/preacher/chisq/chisq.htm.

[22] See Roxy Caraway (2007, April 27). "An Interview with Dr. Donald Shields," *ePluribus Media*. Available at URL: http://www.epluribusmedia.org/columns/2007/20070212_political_profiling.html.

[23] Richard L. Clark (2006, July). Opinions in County Government: A National Survey of County Elected Officials, 2006. Sponsored by the National Center for the Study of Counties (NCSC) and the Carl Vinson Institute of Government, University of Georgia, p.10-11.

APPENDIX A. List of 820 U.S. Attorney-led Grand Jury Investigations and/or Indictments under AGs Ashcroft and Gonzales: January 2001 to September 16, 2007

Note: This longitudinal study is *not* a legal study. It does *not* purport to track the actual case history of any individual other than as it may have been reported in a news story or federal press release. Rather, it is a study of newspaper and television newscast stories that report U.S Attorney-led political corruption investigations. The focus is not on the legal effects of any investigation, but on the political effects of these investigations as seen in local news accounts. Consequently, my use of the word *investigate* is a layperson's use — that is, someone was subpoenaed for records, or to testify, or arrested, or indicted for allegedly perpetrating some federal offense. That does *not* mean they committed a crime; nor does it mean that they were necessarily a named *target* as the FBI employs that term, nor does it mean that they didn't fully cooperate with the investigation. Indeed, it is safe to assume that anyone whose name appears in some news account as being investigated cooperated fully, lest they would in all likelihood be charged with obstruction of justice. I viewed the news stories in the same manner that a typical voter might view them because I was interested in the political effects of such publicly reported investigations.

Every effort has been taken to ensure the accuracy of this data as transcribed from published media news reports tracked on-line across the years. Undoubtedly, some transcription inaccuracies may be present. The author will be happy to correct his master list once alerted to potential inaccuracies.

First Name	Last Name	Elected Office	Location	ZIP	Avowed Reason	Party Affiliation	Status of Case as Known	Approximate Story Date
Thomas	Anderson	State Representative	Anchorage, AK	AK	Extortion, bribery	R	Inv Indt Conv (7/9/2007)	9/18/2006
John	Cowdery	State Senator	Anchorage, AK	AK	Public corruption investigation	R	Inv	5/4/2007
Gretchen	Guess	Fmr State Senator	Anchorage, AK	AK	Public corruption investigation	D	Inv	5/2/2007
James	Hayes	Former Mayor	Fairbanks, AK	AK	Public corruption investigation	D	Inv Indt	1/24/2006
Victor	Kohring	State Representative	Wasilla, AK	AK	Bribery, extortion, conspiracy	R	Inv Indt	9/5/2006
Pete	Kott	State Representative	Eagle River, AK	AK	Bribery, extortion, conspiracy	R	Inv Indt (5/15/2007)	9/5/2006
Carl	Moses	State Representative	Unalaska, AK	AK	Public corruption investigation	D	Inv	5/7/2007
Donald	Olson	State Senator	Nome, AK	AK	Public corruption investigation	D	Inv (8/31/2006)	9/5/2006
Ralph	Seekins	Fmr State Senator	Fairbanks, AK	AK	Public corruption investigation	R	Inv	5/2/2007
Benjamin	Stevens	Fmr. State Senator	Anchorage, AK	AK	Public corruption investigation	R	Inv Dp	9/5/2006
Ted	Stevens	U.S. Senator	Girdwood, AK	AK	Remodeling at Alaska home	R	Inv	5/29/2007
Bruce	Weyhrauch	State Representative	Juneau, AK	AK	Soliciting business for vote	R	Inv Indt (5/15/2007) Conv (9/25/2007)	9/1/2006
Don	Young	U.S. Congressman	Alaska	AK	JHT trucking bill; campaign contr.	R	Inv	3/18/2007
Jimmy L.	Armstrong	Fmr. City Council	Gadsden, AL	AL	Public corruption investigation	NP	Inv Indt PG (8/17/2006)(18-mos 8/17/2007)	2/15/2006
Robert	Avery	City Council	Gadsden, AL	AL	Public corruption investigation	D	Inv	2/15/2006
Roger	Bedford	State Senator	Marion Co., AL	AL	Investigating extortion	D	Inv (charged at state level)	6/2/2002
Robert Michael	Berry	Commissioner	Macon Co., AL	AL	Money and drugs for information	D	Inv Indt Conv	9/24/2003
Kathryn	Black	Commissioner	Cherokee, Co., AL	AL	Bribery investigation	D	Inv Dp	6/30/2004
J. R.	Countryman	City Council	Gadsden, AL	AL	Public corruption investigation	D	Inv	2/15/2006
Bob	Davis	Mayor	Cedar Bluff, AL	AL	Selling confiscated weapons	NP	Inv (Died)	4/25/2005
Bob	Echols	Council President	Gadsden, AL	AL	Public corruption	NP	Inv	2/15/2006
Jeff	Germany	Commissioner	Jefferson Co., AL	AL	Misaward of funds	D	Inv Indt Conv (43-mos 10/16/2006)	7/28/2005
Curtis Lee	Graham	Elected Circuit Clerk	Larmar Co., AL	AL	Disrupted federal invest.	D	Infor PG (2/24/2005) (366-days 9/12/2006)	2/15/2006
Walt	Higgins	City Council	Gadsden, AL	AL	Public corruption investigation	D	Inv	2/15/2006
Fred L.	Huff	Fmr. City Council	Gadsden, AL	AL	Public corruption investigation	NP	Inv Indt PG (8/17/2006)(30-mos 8/17/2007)	2/15/2006
Freeman	Jockisch	County Commissioner	Mobile, AL	AL	Kickbacks, Tax Evasion	R	Inv Indt Conv	11/26/2003

Philip W.	Jordan	Chair Co. Com;Prob Judge	Cherokee Co., AL	AL	Public corruption	D		Inv Indt PG (7/2/2004)	7/1/2004
Yvonne	Kennedy	State Representative	Mobile, AL	AL	BSCC fraud investigation	D		Inv	4/15/2006
Joe	McCarron	Fmr Councilman	Orange Beach, AL	AL	Public corruption investigation		NP	Inv	1/20/2006
Chris	McNair	Commissioner	Jefferson Co., AL	AL	Bribery, conspiracy, mail fraud	D		Inv Indt (7/14/2005) PG (2/14/2007)	6/5/2004
Steve	Means	Mayor	Gadsden, AL	AL	Public corruption		NP	Inv	2/15/2006
Bryant	Melton	State Representative	Tuscaloosa, AL	AL	Misdirected grants	D		Inv Indt PG (8/23/2006)	6/6/2006
Mike	Millican	State Senator	Marion Co., AL	AL	Investigating extortion	D		Inv (charged at state level)	6/2/2002
John F.	Pilati	District Attorney	Franklin Co., AL	AL	Extortion, False statement	D		Inv Indt PG(Misd 5/5/2004)	4/5/2004
John F.	Pilati	Fmr District Attorney	Franklin Co., AL	AL	Civil rights depriv (fondling pris.)	D		Inv Indt	3/1/2007
Ben	Reed	City Council	Gadsden, AL	AL	Public corruption investigation		NP	Inv	2/15/2006
Stephen	Russo	Mayor	Orange Beach, AL	AL	Public corruption investigation		NP	Inv Indt Conv (9/2/2006)	1/18/2006
Richard C.	Shelby	US Senator	AL	AL	Divulging classified information	R		Inv No charge	8/5/2004
Don	Siegelman	Former Governor	AL	AL	Medicare Bid Rigging	D		Inv Indt Acquitted	5/27/2004
Don	Siegelman	Fmr Candidate for Gov	AL	AL	Pay to play for state contracts	D		Inv Indt Conv	10/27/2005
Thomas	Stewart	Mayor	Beach Haven, NJ	AL	Corruption investigation	R		Inv	9/1/2006
Nathan H.	Suzaki	State Senator	Marion Co., AL	AL	Extortion	D		Inv	12/22/2001
Paul	Thomas	Probate Judge, Commiss	DeKalb Co., AL	AL	Bribery investigation	R		Inv (Died)	6/30/2004
Dale	Welsh	Commissioner	Cherokee Co., AL	AL	Bribery investigation	D		Inv Dp	6/30/2004
Earl	Westbrook	Commissioner	Cherokee Co., AL	AL	Accepting bribes	D		Inv (Died)	12/1/2004
Larry	Wilson	Sheriff	Cherokee Co., AL	AL	Corruption probe of Sheriff's Dept	D		Inv	2/11/2004
Leonard Harold	Woodall	Commissioner	Cherokee Co., AL	AL	Accepting bribes	D		Inv Indt Conv (41-mos 9/23/2005)	12/1/2004
Jimmy	Woodward	Fmr Sheriff	Jefferson Co., AL	AL	1998 Illegal use of gov'ment data	R		Inv Indt Dism Conv (1/11/2006)	1/5/2003
Jack	Foster	Alderman	Pine Bluff, AR	AR	Taking bribes	D		Inv Indt Conv (36-mos+3-yrs supv. 3/10/2005)	9/24/2004
Billy	Freeman	Alderman	Pine Bluff, AR	AR	Taking bribes	D		Inv	9/24/2004
Pinkey	McFarlin	Fmr Alderman	Newport, AR	AR	Distributing crack cocaine		NP	Inv Indt PG (11/20/2006)	11/20/2004
J. D.	Hayworth	Fmr. U.S. Congressman	AZ	AZ	Abramhof scandal	R		Inv	4/27/2007
Jim	Irvin	Commis, Arizona Corp.	Phoenix, AZ	AZ	Investigated corruption	R		Inv Declined prosecution	1/26/2004
Rick	Renzi	U.S. Congressman	Flagstaff, AZ	AZ	Soliciting bribes	R		Inv (FBI raided business 4/19/2007)	10/25/2006
Richard	Alatorre	Councilman	Los Angles CA	CA	Campaign fund tax evasion	D		Inv Indt PG	4/3/2001
Steven J.	Alexander	Fmr mayor; judge cand	Azusa City, CA	CA	tax evasion		I	Inv Indt Conv	8/31/2004
Toni	Atkins	Council; Dpty Mayor	San Diego, CA	CA	Selling votes	D		Inv Dp	8/28/2003
Lynn G.	Bedford	Supervisor	San Joaquin Co.	CA	Extortion	D		Inv Indt PG	12/18/2003
Abe	Beltran	City Council; Fmr Mayor	Colton, CA	CA	Corruption	D		Inv Indt PG	8/14/2003
Maria	Benavides	Councilwoman	Southgate, CA	CA	Investigation of corruption	D		Inv	5/19/2003
Deirdre	Bennett	Mayor	Colton, CA	CA	Corruption	D		Inv Indt	8/14/2003
Willie	Brown	Mayor	San Francisco, CA	CA	Invest. public corruption	D		Inv No charge	4/29/2001
Francine	Busby	State Representative cand	Carlsbad, CA	CA	Use of illegal aliens in campaign	D		Inv	10/27/2006
Ken	Calvert	U.S. Congressman	CA	CA	Earmarks for personal gain	R		Inv (Ruled ok--others benefit	5/15/2006
Randy "Duke"	Cunningham	US Congressman	San Marcos, CA	CA	Bribes for Defense Contracts	R		Inv Indt PG (100-mos+36-mos supv 3/3/2006)	7/14/2005

Ignacio	de la Fuente	Council President	Oakland, CA	CA	Invest. public corruption	D		Inv	11/20/2006
John	Doolittle	U.S. Congressman	North Sacramento	CA	Invest. influence peddling		R	Inv	11/25/2005
T. Baxter	Dunn	Sheriff	San Joaquin Co.	CA	Fraud; extortion	D		Inv Indt PG	12/18/2003
Jerry	Eaves	County Supervisor	San BernardinoCo.	CA	Bribery	D		Inv Indt (ruled no standing; filed at state level)	9/17/2001
Jerry	Eaves	County Supervisor	San BernardinoCo.	CA	Mail Fraud	D		Inv Indt	2/10/2002
Pete	Fajardo	Former Mayor	Carson, CA	CA	Extortion (pay for votes)	D		Inv Indt PG (15-mos 11/22/2004)	11/22/2002
Raunda	Frank	Councilwoman	Carson, CA	CA	Extortion	D		Inv Indt PG	11/22/2002
Donna	Frye	Councilwoman	San Diego, CA	CA	Pension fund corruption	D		Inv	1/11/2006
Dave	Garafalo	Former Mayor	Huntington Beach	CA	Bribery		R	Inv Indt PG	7/30/2004
Karl	Gaytan	Former Mayor	Colton, CA	CA	Corruption	D		Inv Indt PG	2/10/2002
James	Grimsby	City Council	Colton, CA	CA	Corruption accepting bribes	D		Inv Indt PG 15-mos	5/12/2003
James K.	Hahn	Mayor	Los Angeles, CA	CA	Awarding contracts & fundraising	D		Inv (dormant)	2/23/2004
Garland	Hardeman	Fmr councilman	Englewood City, CA	CA	Bribery	D		Inv Indt PG	12/20/2004
Jane	Harman	US Congresswoman	Los Angeles, CA	CA	Illegal lobbyists quid pro quo	D		Inv	10/22/2006
Ralph	Inzunza	Deputy Mayor	San Diego, CA	CA	Bribery	D		Inv Indt Conv (21-mos 11/14/2005)	8/28/2003
Ed	Jew	Supervisor, District 4	San Francisco Co.	CA	Illegal contributions		R	Inv Indt (9/20/2007)	5/20/2007
Pamela	Julien-Houchen	Mayor	Huntington Beach,	CA	Investigating bank fraud		R	Inv Indt PG	7/30/2004
Ronald C.	Kline	Sup. Court Judge	Orange Co., CA	CA	Child molestation		NP	Inv ReIndt PG (27-mos 2/20/2007)	7/2/2003
Charles	Lewis	Councilman	San Diego, CA	CA	Selling votes	D		Inv Indt (Died)	5/16/2003
Jerry	Lewis	US Congressman	San Bernadino, CA	CA	Public Corruption		R	Inv	6/17/2006
William	Lowery	Fmr U.S. Congressman	CA	CA	Investigating earmarks from Lewis		R	Inv	6/17/2006
Martin	Ludlow	City Councilman	Los Angeles, CA	CA	Illegal Campaign contributions	D		Inv Indt PG (1-yr probation 3/15/2006)	2/21/2006
Philip J.	Lum	Fmr mayor; Councilman	Colma, San Mateo	CA	Failure to disclose gifts	D		Inv Indt PG (4/6/2007)	10/3/2006
Jim	Madaffer	Councilman	San Diego, CA	CA	Invest. selling votes		R	Inv Dp	5/17/2003
Brian	Maienschein	Councilman	San Diego, CA	CA	Pension fund corruption		R	Inv	1/11/2006
R. Keith	McDonald	Pres., Water District	Carson, CA	CA	Extortion	D		Inv Indt	7/31/2003
Gary	Miller	Congressman	Monrovia, CA	CA	Investigating land deals		R	Inv	2/4/2007
Michael	Mitoma	Fmr Mayor	Carson City, CA	CA	Tax evasion	D		Inv Indt PG	9/15/2001
Raul	Moriel	Vice-Mayor	Southgate, CA	CA	Investigating corruption	D		Inv	5/19/2003
Victor	Mow	Supervisor	San Joaquin Co., C	CA	Wide-ranging corruption invest	D		Inv	12/19/2003
Dick	Murphy	Mayor	San Diego, CA	CA	Pension fund corruption		R	Inv (No charge)	4/25/2005
Manny	Ontal	Councilman	Carson, CA	CA	Extortion	D		Inv Indt PG	11/22/2002
Nancy	Pelosi	U.S. Congresswoman	CA	CA	Invest. Political action committees	D		Inv fined	11/3/2002
Don	Perata	State Senator Pro tem	Oakland, CA	CA	Public corruption	D		Inv (appears dormant)	11/18/2004
Scott	Peters	Councilman	San Diego, CA	CA	Pension fund corruption	D		Inv	1/11/2006
Paul H.	Richards II	former Mayor	Lynwood, CA	CA	Mail fraud; extortion	D		Inv Indt Conv (16-yrs 3/21/2006)	10/14/2004
Albert T.	Robles	Fmr Councilman; Treas	Southgate, CA	CA	Investigating corruption	D		Inv Indt Conv (10-yrs 11/28/2006)	5/19/2003
Gloria	Romero	State Sen; Majority Leader	Los Angeles, CA	CA	Invest public corruption	D		Inv	8/2/2006
Xochilt	Ruvalcaba	Madam Mayor	Southgate, CA	CA	Investigating corruption	D		Inv No charge	5/19/2003

Donald	Sanders	City Council	Colton, CA	CA	Corruption	D		Inv Indt PG	2/10/2002
Kevin	Shelley	Secretary of State	California	CA	Mishandling federal election funds	D		Inv Fined (Resigned)	1/9/2005
Tyrone	Smith	Board, Water District	Carson, CA	CA	Extortion	D		Inv Indt	7/31/2003
Valerie	Stallings	Councilwoman	San Diego, CA	CA	Public corruption re: ball park invest	D		Inv Indt PG Probation Fine	1/25/2001
George	Stevens	Fmr Councilman; Council Cand	San Diego, CA	CA	Pension fund corruption	D		Inv (died 5/25/2004)	1/5/2005
Daryl W.	Sweeney	Mayor	Carson, CA	CA	Extortion	D		Inv Indt PG (71-mos 12/20/2004)	11/22/2002
Michael	Zucchet	Councilman	San Diego, CA	CA	Selling votes	D		Inv Indt Acquitted; 2nd Conv	8/29/2003
Bob	Beauprez	Gov. cand; Congressman	CO	CO	Breeched federal data base		R	Inv Dp	6/30/2005
Charles W. 'Bill'	McClure	Fmr Commissioner	Saguache Co., CO	CO	Preparing client false tax return	D		Inv Indt P.G. (5--mos+17-mos supv 7/29/2006)	3/14/2006
Marilyn	Musgrave	U.S. Congresswoman	Fort Collins, CO	CO	Using office for political activity		R	Inv	10/28/2004
Charles D.	Clemons, Jr.	State Representative	Bridgeport, CT	CT	Investigating public corruption	D		Inv (No charge; Delayed disclosure of Newton bribe 7/24/07)	1/29/2005
John	Fabrizi	Fmr. Council, Mayor	Bridgeport, CT	CT	Drug investigation	D		Inv Clsd	6/29/2006
Joseph P.	Ganim	Mayor	Bridgeport, CT	CT	Corruption, Bribery	D		Inv Indt Conv	4/8/2002
Philip	Giordano	Mayor; Cong. Candidate	Waterbury, CT	CT	Sex with 8 & 10 year old minor girls		R	Inv Indt Conv (37-years)	9/16/2001
Ned	Lamont	U.S. Senate candidate	CT	CT	Crashing opponent's web-site	D		Inv cleared	12/20/2006
Ernest E.	Newton, II	State Senate	Bridgeport, CT	CT	Investigation public corruption	D		Inv Indt PG (60-mos+3-yrs supv 2/2/2006)	1/29/2005
John	Rowland	Governor	CT	CT	Investigating contract corruption		R	Inv Indt PG	12/28/2003
Michael A.	Saad	Selectman Candidate	Plainfield, CT	CT	Illegal Asbetos Removal	D		Inv Indt (8/27/2003) Conv (4/15/2004)	8/8/2003
Paul	Silvester	State Treasurer	CT	CT	Corruption		R	Inv Indt Conv	6/13/2003
Marion S.	Barry, Jr.	Fmr Mayor; Councilman	Washington, DC	DC	Tax evasion	D		Inv Indt PG misd tax (3 yrs probation 3/10/07)	10/29/2005
Richard	Abbott	Council member	New Castle Co., DE	DE	Election worker investigation	D		Inv	11/5/2002
Christopher	Coons	Council President	New Castle Co., DE	DE	Used Co. worker in campaign	D		Inv	11/5/2002
Sherry	Freebery	County Exec. Cand.	New Castle Co., DE	DE	Used Co. worker in campaign	D		Inv Indt Hung Jury Re-Indt	5/28/2004
Tom	Gordon	County Executive	New Castle Co., DE	DE	Used Co. worker in campaign	D		Inv Indt	10/22/2002
Christopher	Roberts	Council member	New Castle Co., DE	DE	Bribery	D		Inv Indt PG to misdem tax chge	11/30/2003
Robert	Weiner	Council member	New Castle Co., DE	DE	Election worker investigation	D		Inv	11/5/2002
Miriam	Alonso	Commissioner	Miami-Dade Co., FL	FL	Stealing campaign funds		R	Inv Dp (Inv and Indt at state level)	8/9/2002
Mike	Bass	Commissioner	Escambia Co., FL	FL	Racketeering, Bribery		R	Inv (charged at state level)	5/2/2002
W.D.	Childers	Fmr State Sen; Commiss	Escambia Co., FL	FL	Campaign funds; bribery		R	Inv (also charged at state level)	5/2/2002
James V.	Crosby	Fmr Mayor; fmr city comm	Starke, FL	FL	Invest of corrections contracts	D		Inv	3/30/2006
Jose "Pepe"	Diaz, Jr.	Commissioner	Miami-Dade Co., FL	FL	Cancun trip for vote		NP	Inv	6/9/2006
James L.	Exline	Commissioner	W. Palm Beach, FL	FL	Tax evasion	D		Inv Indt PG (10-mos+1-yr supv 6/8/2007)	3/6/2007
Tom	Feeney	U.S. Congressman	FL	FL	Scotland Abramhof golf trip		R	Inv	4/23/2007
David A.	Gross	Judge	Nassau Co., FL	FL	Money laundering	D		Inv Indt PG (7/13/2007)	8/31/2005
Kathleen	Harris	U.S. Cong.; US Sen Cand	FL	FL	Political corruption		R	Inv	3/16/2006
Ken	Jenne	Fmr State Senator; Sheriff	Broward Co., FL	FL	Private consulting fees & vendors	D		Inv PG (tax evasion 8/12/2007)	1/12/2007
Willie J.	Junior	Commissioner	Escambia Co., FL	FL	Racketeering, Bribery	D		Inv (also charged at state level)	5/2/2002
Ray	Liberti	Commissioner	W. Palm Beach, FL	FL	Mail fraud, obstruction	D		Inv Indt PG (18-mos 10/19/2006))	5/5/2006
John L. 'Jack'	London	Mayor, Co. Commission	Monroe Co., FL	FL	Lying to FBI, False tax return	D		Inv Indt PG (7/13/2005)	3/29/2004

Tony	Masilotti	Fmr Mayor, Commis, Chair	Palm Beach Co., FL	FL	Taking bribes; personal enrichment	D			Inv Indt PG (1/11/2007) (5-yrs 6/29/2007)	8/24/2006
Warren	Newell	Commissioner	Palm Beach Co., FL	FL	Fraud and tax evasion			RtoD	Inv Information PG (8/7/2007)	7/15/2007
Joe	Russo	Fmr Councilman	Palm Beach Grdns	FL	Voting on proj with financial interest	D			Inv Dp (subject of state ethics invest.)	6/7/2003
Carl	Sabatello	Fmr Councilman	Palm Beach Grdns	FL	Voting on proj with financial interest	D			Inv Dp (subject of state ethics invest.)	6/7/2003
Terry	Smith	Commissioner	Escambia Co., FL	FL	Investigating bribery		R		Inv	7/21/2002
Martin G.	Barnes	Mayor	Patterson, NJ	GA	Accepting payments		R		Inv Indt PG (37-mos)	1/25/2002
JacquelynH.	Barrett	Sheriff	Fulton Co., GA	GA	Investigating public investments	D			Inv	4/21/2004
Brooks E.	Blitch III	Chief Judge, So. GA Circuit Ct	Clinch Co., GA	GA	Investigating misdem probation program	D			Inv	6/26/2007
Threet	Brown	Council member	East Point, GA	GA	Investigating travel expenses	D			Inv	9/27/2002
William C.	Campbell	Mayor	Atlanta, GA	GA	Investigating corruption	D			Inv Indt Conv tax evasion (30-mos 6/13/06)	1/25/2003
Terry	Coleman	State House Speaker	GA	GA	Ethics investigation	D			Inv	6/4/2003
Ann	Douglas	Council member	East Point, GA	GA	Investigating travel expenses	D			Inv	2/8/2005
Jack	Ellis	Mayor	Macon ,GA	GA	Spending investigation	D			Inv	6/6/2005
Catherine H.	Helms	District Attorney	Clinch Co., GA	GA	Invest misdem probation program	D			Inv	6/26/2007
Patsey Jo	Hilliard	Mayor	East Point, GA	GA	Investigating transactions	D			Inv	9/27/2002
Wayne	Hooks	Sheriff	Truetlen Co., GA	GA	Assaulted arrestee, witness tamp	D			Inv	1/9/2003
Daniel V.	Lecoese	Clerk, Circuit Court	Clinch Co., GA	GA	Invest misdem probation program	D			Inv Indt PG (8/13/2007)	6/26/2007
Cynthia	McKinney	U.S. Congresswoman	GA	GA	Assault on Capitol police	D			Inv (No Bill; Clsd)	4/6/2006
Ralph	Reed	Lt. Governor Cand	GA	GA	Abramhof Indian Cacino scandal		R		Inv	8/30/2004
Linda	Schrenko	GA Sc. Supt, Gov Cand	GA	GA	Misappropriation of funds		R		Inv Indt PG (8-yrs.)	11/14/2004
Mitch	Skandalakis	Chair, Co. Comm.	Fulton Co., GA	GA	Lying to federal investigators		R		Inv	7/1/2001
Donnie 'Van'	Streat	State Senator	Nicholls, GA	GA	Campaign contributions	D			Inv (after state dismissed)	6/12/2003
Charles 'Champ'	Walker, Jr.	Fmr U.S. Congress Cand	Savannah, GA	GA	On-going Savannah investigation	D			Inv	8/18/2003
Charles W.	Walker, Sr	State Senator Maj Leader	GA	GA	Investigation of State grants	D			Inv Indt Conv (121-mos 11/29/2005)	6/4/2003
Robin	Williams	Fmr State Representative	GA	GA	Public corruption		R		Inv Indt Conv	5/5/2004
James "Kimo"	Apana	Mayor	Wailuku, Maui, HI	HI	Extortion, pay-for-play	D			Inv	6/22/2002
Ben	Cayetano	Governor	HI	HI	Invest. corruption	D			Inv	6/22/2002
Galen	Fox	State Representative	HI	HI	Sexual Battery on airplane		R		Inv Indt PG (Misd Hse Arrest 10/20/2005)	11/1/2005
Jeremy	Harris	Mayor, Governor Cand	Honolulu, HI	HI	Investigating campaign fund	D			Inv (Indted only associates)	1/16/2002
Ms. Mazie	Hirono	Lt. Gov.; Gub. Cand.	HI	HI	Invest. corruption	D			Inv	3/1/2002
Rene	Mansho	City Council	Honolulu, HI	HI	Misusing campaign funds & staff	D			Inv (Indt Conv by Circuit Court)	3/1/2002
Andy	Mirikitani	City Council	Honolulu, HI	HI	Kickbacks from city employees	D			Inv Indt Conv (51-mos 12/6/2001)	3/1/2001
Nathan H.	Suzuki	State Representative	HI	HI	Tax evasion	D			Inv Indt PG (3/31/2004)	2/28/2002
Dalton	Tanonaka	Cand. Lt. Gov; Cand. Cong	HI	HI	Exceeded contribution limits			DtoR	Inv Indt PG; 3-mos	7/21/2005
Ako	Abdul-Samad	State Representative	Des Moines, IA	IA	CIETC board spending	D			Inv	1/23/2007
Archie	Brooks	Councilman	Des Moines, IA	IA	Investigation of corruption	D			Inv Indt (1/11/2007)	4/20/2006
Tom	Harkin	U.S. Senator	Iowa	IA	Electr recording of a public meeting	D			Inv (No violation 10/7/2002)	10/7/2002
John	Mauro	Supervisor	Polk Co., IA	IA	CIETC investigation	D			Inv	3/27/2007
Matt	McCoy	State Senator	Des Moines, IA	IA	Violation of Hobbs Act	D			Inv Indt (3/14/2007)	3/14/2007

Edward	Mezvinsky	Fmr U.S. Congressman	IA	IA	Fraud investigation	D		Inv Indt PG (9/28/2002)	3/23/2001
Tom	Vlassis	City Council	Des Moines, IA	IA	CIETC board spending	D		Inv	1/23/2007
Michael S.	Augustine	Fmr Alderman	Waterloo, IL	IL	Fire to commit felony	D		Inv Indt PG 156-mos 12/11/2006)	6/22/2005
William	Beavers	Alderman	Chicago, IL	IL	Hiring Fraud	D		Inv	8/8/2005
Rod	Blagojevich	Governor	Chicago, IL	IL	Corruption in state hiring	D		Inv (on-going)	9/18/2005
Rod	Blagojevich	Governor	Chicago, IL	IL	Subpoenaed campaign records	D		Inv	5/24/2007
Nicholas	Blasé	Mayor	Village of Niles, IL	IL	Mail fraud	D		Inv	6/7/2006
Alex	Bojovic	Alderman	Berwyn, IL	IL	Investigating city contracts	D		Inv (became co-operating bribee)	12/10/2003
Richard	Daley	Mayor	Chicago, IL	IL	Hiring Fraud on-going invest.	D		Inv (interviewed 4/26/2005)	8/8/2005
Lee A.	Daniels	State Representative	Elmhurst, IL	IL	Investigating use of workers		R	Inv (Indted his chief of staff 5/19/2005)	2/3/2004
Kelvin	Ellis	Committeeman	East St. Louis, IL	IL	Vote buying	D		Inv Indt Conv (54-mos 2/6/2006)	12/9/2004
Jerry	Genova	Mayor	Calumet City, IL	IL	Staff campaigning on city time	D		Inv Indt Conv	8/27/2001
Luis	Gutierrez	U.S. Congressman	Chicago, IL	IL	Land Purchase	D		Inv	11/15/2006
Oliver	Hamilton	Committeeman	East St. Louis, IL	IL	Vote buying	D		Inv	1/26/2005
Dennis	Hastert	Fmr U. S. Congressman	IL	IL	Bribery		R	Inv Indt Conv	5/24/2006
Dan	Hynes	St Comptroler USSen cand	Chicago, IL	IL	Use of campaign war-chest	D		Inv	1/26/2004
Emil	Jones	Pres., State Senate	IL	IL	Invest. campaign corruption	D		Inv	6/5/2003
Eric	Kellogg	Mayor	Harvey, IL	IL	Alleged tampering	D		Inv	8/17/2006
Eric	Kellogg	Mayor	Harvey, IL	IL	Misuse of public money	D		Inv	4/30/2007
James J.	Laski	Fmr Alderman,City Clerk	Chicago, IL	IL	Investigation of hired truck program	D		Inv Indt (1/27/2006)PG	1/14/2006
Jesse	Lewis	Committeeman	East St. Louis, IL	IL	Vote buying	D		Inv (indicted at state level)	3/23/2005
Betty	Loren-Maltese	Council President	Cicero, IL	IL	Fraud; racketeering		R	Inv Indt Conv	6/16/2001
Robert	Lovero	Alderman	Berwyn, IL	IL	Investigating city contracts	D		Inv	12/10/2003
Lisa	Madigan	State Attorney Geneneral	IL	IL	Invest. 02 Campgn Contributions	D		Inv	6/5/2003
Michael	Madigan	State House Speaker	IL	IL	Investigating campaign funding	D		Inv	6/5/2003
Burt	Natarus	Alderman	Chicago, IL	IL	Legal fees or campaign loans	D		Inv	11/3/2004
Lilli	Nichols	Committeewoman	East St. Louis, IL	IL	Vote buying	D		Inv Indt Conv (4-mos 3/3/2006	3/22/2005
Baraca	Obama	fmr State Sen; US Senator	Chicago, IL	IL	Land Purchase	D		Inv	11/5/2006
Carl E.	Officer	Mayor	East St. Louis, IL	IL	Vote fraud	D		Inv	10/28/2004
Julius	Patterson	Alderman	Harvey, IL	IL	Theft of government funds	D		Inv Indt (8/31/2007)	4/30/2007
James 'Pate'	Phillip	Retired State Senator	Wood Dale, IL	IL	Investing campaign spending		R	Inv	2/3/2004
Charles	Powell, Jr.	Committeeman; Chair	East St. Louis, IL	IL	Vote buying	D		Inv Indt Conv (21-mos 3/23/2005)	12/9/2004
George	Ryan	Governor	IL	IL	Bribery, Graft		R	Inv Indt Conv (78-mos 9/6/2006)	12/18/2003
LeRoy	Scott, JR.	Committeeman	East St. Louis, IL	IL	Vote buying	D		Inv Indt Conv (10-mos 3/10/2006)	3/22/2005
Tom	Shaughnessy	Mayor	Berwyn, IL	IL	Investigating city contracts	D		Inv	12/10/2003
Paul	Stanley	State Senator	Memphis, TN	IL	Public corruption		R	Inv Indt PG	8/28/2002
Samuel	Stillo	Fmr Alderman; Ast. Mayor	Berwyn, IL	IL	Racketeering; bribery	D		Inv Indt PG (30-mos 11/5/2006)	11/25/2003
Terrance	Stith	Committeeman	East St. Louis, IL	IL	Vote buying	D		Inv Indt Conv (4-mos 33/2006)	12/9/2004
John	Stroger	Former Board Pres.	Cook Co., IL	IL	Investigation	D		Inv	9/16/2006

Todd	Stroger	Commissioner	Cook Co., IL	IL	On-going investigation	D			Inv	12/29/2006
Sheila	Thomas	Committeewoman	East St. Louis, IL	IL	Vote buying	D			Inv Indt Conv (18-mos 1/30/2006)	12/9/2004
Judy Baar	Topinka	State Treasurer	IL	IL	Invest. effort to ban Libertarians		R		Inv No charge	6/5/2003
Arenda	Troutman	Alderman	Chicago, IL	IL	FBI sting (fictitious developer)	D			Inv Indt (1/9/2007)	12/15/2006
Edward	Vrdolyak	Fmr Alderman	Chicago, IL	IL	FBI sting mortgage fraud			DtoR	Inv Indt	8/17/2006
Michael	Woodward	Mayoral candidate	Berwyn, IL	IL	Investigating city contracts	D			Inv	12/10/2003
Dozier	Allen, Jr.	Elected Trustee	Calumet Twnp, IL	IN	Work force grant investigtion	D			Inv Indt (9/20/2007)	4/25/2006
Randall	Artis	Councilman	East Chicago, IN	IN	Fraud in sidewalk program	D			Inv Indt Conv	5/7/2004
Peter	Benjamin	Fmr Assessor, Fmr Auditor	Lake County, IN	IN	Extortion	D			Inv Indt PG	6/19/2002
Joe	De La Cruz	Councilman	East Chicago, IN	IN	Fraud in sidewalk program	D			Inv Indt	9/8/2003
Mary	Elgin	Elected Trustee	Calumet Twnp, IL	IN	Work force grant investigtion	D			Inv	4/25/2006
Katie B.	Hall	Clerk	Gary City, IN	IN	Extortion	D			Inv Indt PG (1/27/03 Hse arrest & probation)	6/19/2002
Paul R.	Karras	Assessor	Lake County, IN	IN	Backdating property tax appeals	D			Inv	8/15/2004
Frank	Kollintzas	Councilman	East Chicago, IN	IN	Fraud in sidewalk program	D			Inv Indt Conv	9/8/2003
Gus	Kouros	Councilman	East Chicago, IN	IN	Concrete for votes	D			Inv Named unindicted Co-conspirator	10/1/2004
John	Matonovich	Assessor	N Twp, Lake Co., IN	IN	Wide-ranging investigation	D			Inv	5/6/2003
Troy	Montgomery	Council President	Lake County, IN	IN	Extortion	D			Inv Indt PG	6/19/2002
Michael K.	Orsburn	Keener Twnp Trustee	Jasper Co., IN	IN	Unauthorized checks		R		Inv Indt PG (135-mos 6/28/2007)	3/31/2005
Robert	Pastrick	Mayor	East Chicago, IN	IN	Concrete for votes	D			Inv Named unindicted Co-conspirator	4/12/2004
Adrian	Santos	Councilman	East Chicago, IN	IN	Fraud in sidewalk program	D			Inv Indt	9/8/2003
Sam	Smith	State Senator	East Chicago, IN	IN	Fraud in sidewalk program	D			Inv	7/19/2002
William	Smith, Jr.	Councilman	Gary, Lake County,	IN	Fraud in personal finances	D			Inv Indt Conv (9/28/2007)	10/5/2006
Stephen	Stiglich	Auditor	Lake County, IN	IN	Wide-ranging investigation	D			Inv	5/6/2003
Michael L.	Goodrich	County Attorney	Cherokee Co., KS	KS	Extortion	D			Inv Indt (9/19/2007)	7/24/2007
Adam	Taff	U.S. Congress Cand.	Kansas City, KS	KS	Illicit use of campaign funds		R		Inv	8/17/2005
Calvin R. 'Randy'	Armitage	Sheriff	Bath Co., KY	KY	Vote-buying	D			Inv Indt (sweats arraignment July 2007)	11/13/2006
Ben	Chandler	KY AG, GovCand, Cong.	Versailles, KY	KY	Campaign fund; vote hauling	D			Inv (continued throughout 2005)	7/7/2003
Douglas	Combs	Circuit Judge	Perry Co., KY	KY	Hiring no-show workers	D			Inv Indt PG (6/13/2007)	4/15/2004
Vernon	Hacker	City councilman	Manchester, KY	KY	Drug ring: tampering with witness	D			Inv Indt	8/8/2005
Vernon	Hacker	Fmr Councilman	Manchester, KY	KY	Racketeering	D			Inv Re-Indt PG (6/18/2007)	5/8/2007
John Doug	Hays	Fmr State Sen Judge cand	Pike County, KY	KY	Investigating cp contributions	D			Inv Indt PG	7/7/2003
Steve	Henry	Fmr Lt. Governor	KY	KY	Surgery billing investigation	D			Inv (Settled)	11/7/2002
Darnell	Hipsher	Councilman	Manchester, KY	KY	Racketeering, false testimony	D			Inv Indt PG (8/18/2007)	5/8/2007
Fred Clinton	Johnson	Magistrate candidate	Clay Co., KY	KY	Election-fraud		R		Inv Indt	5/25/2007
Ray S.	Jones	State Senate	Pikeville, KY	KY	Cmpgn contributions; vote hauling	D			Inv (continued throughout 2005)	7/7/2003
Steve	Kellam	Jailer	Grant County, KY	KY	Human rights investigation	D			Inv	6/8/2003
Debra	Lambert	Family Ct 28th Cir Judge	KY	KY	Campaign contribution			NP	Inv (continued throughout 2005)	7/7/2003
Joseph	Lambert	Supreme Ct Chief Justice	KY	KY	Cmpgn contributions and decisions			NP	Inv (continued throughout 2005)	7/7/2003
Donald 'Champ'	Maze	Prosecuting Atty nominee	Bath Co., KY	KY	Voter buying fraud	D			Inv Indt PG (21-mos 7/5/2007)	11/13/2006

Mitch	McConnell	U.S. Senator	KY	KY	Invest. campgn funds; vote hauling		R	Inv (continued throughout 2005)	7/7/2003
Danny W.	Miller	City councilman	Central City, KY	KY	Worker's comp fraud		NP	Inv Indt PG	9/24/2005
Jeff	Morris	Sheriff Candidate	Clay Co., KY	KY	Conspiracy to murder Sheriff		R	Inv Indt PG	5/29/2002
Donnie	Newsome	Judge-Executive	Knott County, KY	KY	Vote Buying	D		Inv Indt Conv (Gov appted a Repub)	4/25/2003
Paul E.	Patton	Governor	KY	KY	Misuse of power	D		Inv Dp	9/25/2002
Walter Bascom	Shrout	Judge-Executive	Ashland, Bath Co.	KY	Voter fraud	D		Inv Indt Conv (27-mos 7/5/2007)	11/13/2006
Greg	Stumbo	State Rep.; AG Cand.	Pattonsburg, KY	KY	Investigating campaign contrib.	D		Inv	7/7/2003
D. Michael	Swartz	Cand, Judge-Exec.	Ashland, Bath Co	KY	Voter fraud	D		Inv Indt PG (awaits sent'cing 7/1/2007)	7/11/2006
Johnny Ray	Turner	State Senator	Drift, KY	KY	Campaign contrib; vote hauling	D		Inv Indt PG (12/13/2006)	7/7/2003
Charles	Wallace	Judge-Executive	Carter Co., KY	KY	Anonymously mailed newsletter	D		Inv	10/19/2006
Daugh K.	White	Fmr Mayor	Manchester, KY	KY	Drug ring		R	Inv Indt (5/8/2007) PG (8/13/2007)	2/5/2007
Jennings B.	White	County Clerk; Clerk cand	Clay Co., KY	KY	Conspiracy to murder Sheriff		R	Inv Indt PG (Drug trafficking)	5/29/2002
David	Williams	Pres State Senate	Burkesville, KY	KY	Cmpgn contributions; vote hauling		R	Inv	7/7/2003
Una	Anderson	State Representative	Orleans Parish, LA	LA	Non-profits use of state money	D		Inv	7/11/2007
Bill	Belt	Sheriff; State Repres Cand	Avoyelles Parish	LA	Operating phone service in jail	D		Inv Indt	8/8/2007
Jay 'Jack'	Blossman, Jr.	Public Service Comm.	LA	LA	Campaign finance corruption		R	Inv	7/4/2002
Ronald D.	Bodenheimer	Fm Dist Atty; District Judge	Jefferson Parish, LA	LA	Bail bond corruption investigation		R	Inv Indt PG	10/3/2004
Paul	Bonin	Traffic court judge	New Orleans, LA	LA	Investigating traffic court	D		Inv (Indicted 2 staff)	6/7/2007
Ellenese	Brooks-Simms	Sch. Board President	Orleans Parish, LA	LA	Bribery investigation	D		Inv Indt PG	6/20/2007
Susan	Chehardy	Appeals judge	5th Cir., Gretna, LA	LA	Corruption investigation		R	Inv	2/8/2006
Dennis	Dannel	Traffic court judge	New Orleans, LA	LA	Investigating traffic court	D		Inv	6/7/2007
Irma Muse	Dixon	Public Service Comm.	LA	LA	Campaign finance corruption	D		Inv	7/4/2002
Jimmy	Fahrenholtz	Sch. Bd. Mem; Mayor cand	New Orleans, LA	LA	Non-profits use of state money	D		Inv	7/11/2007
Jimmy	Field	Public Service Comm.	LA	LA	Campaign finance corruption	D		Inv	7/4/2002
Bonnie	Fruge	Councilwoman	Madisonville, LA	LA	Illegal use of elected position	D		Inv	2/15/2007
Alan	Green	District Judge	Jefferson Par., LA	LA	Racketeering, fraud, conspiracy	D		Inv Indt Conv (51-mos 2/9/2006)	9/29/2004
Kyle	Green	State Representative	Marrero, LA	LA	Campaign contributions	D		Inv	9/30/2004
Kerman "Skip"	Hand	State judge	Jefferson Parish, LA	LA	Corruption investigation		R	Inv	2/8/2006
Joe	Impastato	Councilman	St Tammany Parish, LA	LA	Extorting in Katrina sting	D		Inv Indt (projected June 2007 trial)	11/18/2005
William	Jefferson	U.S. Congressman	New Orleans, LA	LA	Public corruption sting	D		Inv Indt (2007)	3/29/2005
Jalilia	Jefferson-Bullock	State Representative	New Orleans, LA	LA	Corruption investigation	D		Inv	8/3/2005
Robert	Jones	Traffic court judge	New Orleans, LA	LA	Investigating traffic court	D		Inv (Indicted 2 staff)	6/7/2007
Harry	Lee	Sheriff	Jefferson Parish, LA	LA	Jailer corruption	D		Inv (indicted deputies) (died 10/1/2007)	4/23/2005
Cheryl	Mills	Fmr Sch Board member	New Orleans Parish, LA	LA	Investigating contracts	D		Inv	10/10/2003
Marc	Morial	Former Mayor	New Orleans, LA	LA	Investigating contract awards	D		Inv (on-going)	6/17/2004
Steve	Mortillaro	Justice of the Peace	Gretna, LA	LA	Corruption investigation		R	Inv	2/8/2006
Bob Odom	Odom	State Forestry Commiss	Baton Rouge, LA	LA	Bribery	D		Inv Indt (Acquitted)	8/23/2002
Don	Owen	Public Service Comm.	LA	LA	Campaign finance corruption	D		Inv	7/4/2002

Corey	Pittman	Elected Police Chief	Lucher, LA	LA	Selling drugs	D		Inv Indt PG Conv (92-mos 3/29/2006)	11/15/2005
Renee Gill	Pratt	Fmr Councilwoman	New Orleans, LA	LA	Non-profits use of state money	D		Inv	6/27/2007
Barney Dewey	Ratcliff, Jr.	Former Commission President	Livingston Parish	LA	Mail fraud state campaign reports		R	Inv Indt (no jurisdiction)	11/3/2004
Robert R.	Ringo	Councilman	Livingston Parish	LA	False tax return statement		R	Inv Indt PG (6-mos home-deten 9/19/2007))	8/24/2006
Ronald	Sholes	Traffic court judge	New Orleans	LA	Investigating traffic court	D		Inv (Indicted 6 staff)	6/7/2007
Dale	Sittig	Public Service Comm.	LA	LA	Campaign finance corruption	D		Inv	7/4/2002
Alvin	Thomas	Councilman	Ascension Parish	LA	Soliciting bribes	D		Inv Indt PG	11/5/2006
Oliver	Thomas, Jr.	Councilman;Mayoral Cand	New Orleans, LA	LA	Bribery	D		Inv Indt PG (resigned seat 8/13/2007)	6/12/2007
Camile J.	Trabeau	Former Mayor	Sorrento, LA	LA	Mail fraud	D		Inv Indt PG	1/5/2005
Elliot	Willard	Fmr Sch Bd Member	Orleans Parish, LA	LA	Non-profits use of state money	D		Inv	7/11/2007
Stephen J.	Windhorst	State Judge	Gretna, LA	LA	Corruption investigation		R	Inv	2/8/2006
Mike	Albano	Mayor	Springfield, MA	MA	Investigating corruption	D		Inv (Chief of staff PG)	2/2/2002
Christopher	Asselin	State Representative	Springfield, MA	MA	Housing authority corruption	D		Inv Indt PG	7/13/2004
Ruth B.	Baiser	State Representative	Newton, MA	MA	Investigtion into redistricting	D		Inv	4/16/2004
Andrea	Cabral	Sheriff	Suffolk Co., MA	MA	Lying to FBI	D		Inv Closed no bill of indictment	8/22/2005
Thomas M.	Finneran	State House Speaker	Boston, Massachusetts	MA	Investigation into redistricting	D		Inv Indt PG (Perjury)	4/16/2004
Richard R.	Goyette	Mayor	Chicopee, MA	MA	Illegal campaign contribution		R	Inv	6/8/2005
Kay	Khan	State Representative	Newton, MA	MA	Investigation into redistricting	D		Inv	4/16/2004
Peter J.	Koutoujian	State Representative	Watertown, MA	MA	Investigation into redistricting	D		Inv	4/16/2004
Thomas M.	Petrolati	State Representative	Ludlow, MA	MA	Investigation into redistricting	D		Inv	4/15/2004
Richard J.	Rouse	Sheriff	Suffolk Co., MA	MA	Corruption investigation	D		Inv (agreed to retire; censured)	9/27/2002
James A.	Sheets	Fmr Mayor	Quincy, MA	MA	Corruption investigation	D		Inv	10/23/2002
Kwame Osayaba	Abayomi	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Joanne C.	Benson	Delegate	Prince George's	MD	Anti-crime grants investigation	D		Inv	8/1/2002
Stephanie R.	Blake	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Thomas	Bromwell	Fmr. State Senator	Annnapolis, MD	MD	Public corruption; accepting bribes	D		Inv Indt PG (7/24/2007)	12/17/2003
John L.	Cain	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Pamella V.	Carter	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Robert	Curran	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Nicholas	D'Adamo	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Sheila	Dixon	Council president	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Bob	Ehrlich	Governor	MD	MD	Corruption investigation		R	Inv (On-going 10/31/2006) Dp	6/2/2004
Lois	Garey	Council member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	11/7/2003
Kenneth N.	Harris	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Helen Holton	Holton	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Paula	Johnson Branch	Council member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Gloria	Lawlah	State Senator	Prince George's	MD	Anti-crime grant investigation	D		Inv	8/1/2002
Thomas V.	Miller	State Senate President	MD	MD	Campaign Cmte corruption	D		Inv	7/3/2003

Keiffer J.	Mitchell	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Martin	O'Malley	Mayor	Baltimore City, MD	MD	Minority business investigation	D		Inv Clsd	5/28/2004
Catherine E.	Pugh	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Edward	Reisinger	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Rochelle	Spector	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Lisa Joi	Stancil	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Melvin L.	Stukes	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Kathleen K.	Townsend	Lt. Governor; Governor	MD	MD	Anti-crime grants for political work	D		Inv Found no misconduct	7/31/2002
Agnes	Welch	Council Member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Bernard "Jack"	Young	Council member	Baltimore City, MD	MD	Wide-ranging investigation	D		Inv Clsd	10/19/2003
Ray	Alexander	Councilman	Pontiac, MI	MI	Public corruption	D		Inv Indt	12/13/2002
Dennis	Archer	Outgoing Mayor	Detroit, MI	MI	Investigating housing authority	D		Inv	6/30/2001
Jim	Barcia	State senator	Bay City, MI	MI	Campaign finance tied to Marlinga	D		Inv Indt Dismissed	4/27/2004
William H.	Barnwell	City council	Warren, MI	MI	Paid salary but working on house	D		Inv Indt	9/30/2001
Aloszo	Bates	Fmr Councilman	Detroit, MI	MI	Ghost jobs	D		Inv Indt Conv (8/31/2006)	12/4/2004
Charles T.	Busse	President, City council	Warren, MI	MI	Extortion; public corruption	D		Inv Indt	6/29/2001
Sheila	Cockrell	Fmr Councilwoman	Detroit, MI	MI	Ghost jobs		I	Inv	12/4/2004
Jackie	Currie	City Clerk	Detroit, MI	MI	Investigating absentee ballots	D		Inv	11/3/2005
George	Dimas	City council	Warren, MI	MI	Campaign finance corruption		NP	Inv	6/29/2001
Michael	Duggan	Prosecutor	Wayne Co., MI	MI	Investigating campaign; worker use	D		Inv (asst. prosecutor indicted))	12/11/2002
Kay	Everett	City Councilperson	Detroit, MI	MI	Extortion; bribery	D		Inv Indt (Died)	10/1/2004
Robert A.	Ficano	Sheriff; Cand. Co. Exec	Wayne Co., MI	MI	Investigating campaign spending	D		Inv (as state case indicted Sheriff's aide)	8/17/2003
Geoffrey	Fieger	Attorney General Cand	Detroit, MI	MI	Cmpgn contributions to Edwards	D		Inv Indt (8/25/2007)	12/2/2005
Jennifer	Granholm	Governor-elect	MI	MI	Investigating campaign records	D		Inv	12/5/2002
Suzanne	Hall	Mayor	Southgate, MI	MI	Role as aide to McNamara	D		Inv	12/5/2002
Melvin B.	Hollowell	02 Sec'y of State Cand	Detroit, MI	MI	Investigating ties to McNamara	D		Inv	12/5/2002
Kevin	Kelley	Supervisor; Congress Candidate	Redford; Wayne Co	MI	Invest. ties to E.H. McNamara	D		Inv	12/5/2002
Kwame	Kilpatrick	Mayor	Detroit, Wayne Co.	MI	Investigating ties to McNamara	D		Inv	12/5/2002
Ann	Klein	City council	Warren, MI	MI	Campaign finance corruption		NP	Inv	6/29/2001
Frederick A.	MacKinnon	Fmr. Prosecutor	Ogemaw Co., MI	MI	Confiscated guns for personal use	D		Inv Indt Conv (8/31/2007)	1/20/2005
Carl	Marlinga	Prosecutor; Cong cand	Macomb Co., MI	MI	Favors for contributions	D		Inv Indt (Court thru out)	2/11/2003
Carl	Marlinga	Prosecutor Fmr Cong cand	Macomb Co., MI	MI	Favors for contributions	D		Indicted 9/14/2005 Acquited (9/26/2006)	9/14/2005
Wade	McCann	Asstant prosecutor	Wayne Co., MI	MI	Compiling political list at work	D		Inv Indt (finded, license suspened at state)	12/3/2003
Edward H.	McNamara	County Executive	Wayne Co., MI	MI	Governm't workers' fundraising	D		Inv (4-yr on-going))	11/22/2002
Marcia	Ottoman	Trustee	Dexter Twp., MI	MI	Imprsonating a U.S. Attornety		R	Inv Indt	5/10/2007
Keith	Stallworth	Wayne Co., Comm.	Wayne Co., MI	MI	Laundering drug money	D		Inv Indt	7/3/2001
Daniel	Woodhouse	Councilman	Warren, MI	MI	Filing false income tax returns	D		Inv Indt	2/12/2003
Jaun	Bebauta	Fmr Governor	Saipan, US com'wealth MIs	MIs	Campaing contributions, bribery		R	Inv	7/1/2007

Joseph	Biernat	City council	Minneapolis MN	MN	Free plumbing	D			Inv Indt Conv	4/29/2002
Winston 'Win'	Borden	Fmr State Senator D-13	St. Paul, MN	MN	Failure to file tax return	D			Inv Indt Conv	3/17/2004
Jackie	Cherryholmes	City councilwoman	Minneapolis, MN	MN	Investigating plumbing wk on home	D			Inv	3/18/2002
Brian	Herron	Fmr City councilman	Minneapolis, MN	MN	Public corruption	D			Inv Indt PG	3/18/2002
Loren G.	Jennings	Former State Rep.	Chicago Co., MN	MN	Mail fraud; money laundering	D			Inv Indt Conv	10/19/2004
Randy	Kelly	Mayor	St. Paul, MN	MN	Corruption investigation of Office	D			Inv	2/8/2005
Amy	Klobuchar	Cand US Senate; Senator	MN	MN	Investigating campaign	D			Inv	9/6/2006
James	Oberstar	U.S. Senate	Minnesota	MN	JHT trucking bill investigtion	D			Inv	3/18/2007
Name	Removed	Elected city official	Minneapolis, MN	MN	Political corruption investigation	D			Inv	3/14/2002
Kathy	Thurber	Fmr city councilwoman	Minneapolis, MN	MN	Investigating plumbing wk at home	D			Inv	3/18/2002
G.Dean	Zimmermann	City council	Minneapolis, MN	MN	Soliciting bribes			G	Inv Indt Conv (30-mos 12/19/2006)	9/9/2005
Matt	Blunt	Governor	MO	MO	Privatizing/Awarding Fee Offices		R		Inv Clsd	4/28/2006
John	Bowman	State Legislator	St. Louis Co., MO	MO	Credit card fraud	D			Inv Indt (1/29/2007)	1/30/2007
Shawn	Brown	Mayor	St. Peters, MO	MO	Soliciting bribes		R		Inv Indt PG (10/20/2006)	8/18/2006
Carl W.	Bussey	Former County Legis.	Jackson Co., MO	MO	Perjury (Neal investigation)	D			Inv Indt (1/4/2007)	5/4/2005
John	Campisi	County Councilman	St. Louis Co., MO	MO	Accepting bribes for cab licenses		R		Inv No chge (Saggio PG to bribing him)	6/6/2002
Emanuel	Cleaver	Fmr Mayor; Congressman	Kansas City, MO	MO	Investigating HUD job	D			Inv Dp	7/10/2004
Nathan	Cooper	State Representative	Cape Girardeau	MO	Immigration fraud		R		Inv Indt PG (8-9-2007)	11/29/2005
Douglas	Jones	Sheriff	Clark Co., MO	MO	Lying to FBI, sex with inmate	D			Inv Indt Pled to resign + 2 months	11/29/2001
Deborah	Masten	Former Mayor	Kirksville, MO	MO	Arson			NP	Inv Indt Conv (63-mos 8/3/2007)	3/3/2005
Saundra	McFaddin-Weaver	Council member	Kansas City, MO	MO	Bank and mail fraud	D			Inv Indt (1/2/2007) Conv (8/17/2007)	10/7/2006
Deborah A.	Neal	Municipal Judge	Kansas City, MO	MO	Investigated concealed loans	D			Inv Indt PG (28-mos)	10/30/2004
Name	Removed	County elected official	Jackson Co., MO	MO	Anti-drug sales tax contracts	D			Inv Dp (USAO issues letter saying official is not being investigate 3/10/2004)	3/2/2004
Name	Removed	County elected official	Jackson Co., MO	MO	Anti-drug sales tax contracts	D			Inv (Official said he was questioned about a bribe offer to him 3/17/2004) Dp	3/2/2004
Jeffrey D.	Sayre	Fmr 9th Judicial Cir Judge	Sullivan Co., MO	MO	Bribe for dismissing drug charge		R		Inv Indt PG	4/3/2003
Katheryn J.	Shields	County Executive	Jackson Co., MO	MO	Investigating County contracts	D			Inv Dp	3/2/2004
Katheryn J.	Shields	Fmr Executive	Jackson Co., MO	MO	Investigating use of staff as drivers	D			Inv	2/15/2007
Katheryn J.	Shields	Fmr County Executive	Jackson Co., MO	MO	Mortgage fraud	D			Inv Indt (1/3/2007)	1/3/2007
Roger E.	Wall	Assoc Cir Ct Judge	Ava, Douglas Co.	MO	Possession child porn		R		Inv Indt (ReIndicted 9/7/2007)	2/21/2005
Bill	Waris	Fmr Co. Exec; Lobbyist	Jackson Co., MO	MO	Material false statement to FBI	D			Inv Indt PG (fined, 3-years probation)	5/13/2004
Robert A.	Young, IV	County Councilman	St. Louis Co., MO	MO	Accepting bribes for cab licenses	D			Inv Indt PG	6/6/2002
Oliver	Diaz, Jr.	Supreme Court Justice	Biloxi, State of MS	MS	Fraud, friendly with trial lawyers	D			Inv Indt Acquited	10/7/2002
Oliver	Diaz, Jr.	Supreme Court Justice	Biloxi, State of MS	MS	Tax evasion	D			Inv ReIndt Acquitted	4/30/2006
Jerry	Ellington	Sheriff	Tunica Co., MS	MS	Extortion	D			Inv Indt	8/6/2003
Mike	Moore	Atty Genrl; U.S. Sen Cand	MS	MS	Friendly with judges	D			Inv	6/8/2003
Ronnie	Musgrove	Governor	MS	MS	Cozy with trial lawyers	D			Inv	11/3/2002
J. N.	Randall, Jr	Chancery Judge	Harrison Co., MS	MS	Friendly with trial lawyers	D			Inv (Agreed to resign and repay)	6/24/2002
Thomas	Teel	Chancery Judge	Harrison Co., MS	MS	Suspected embezzlement	D			Inv (Agreed to resign and repay)	2/24/2002

Walter "Wes"	Teel	Chancery Judge	Harrison Co., MS	MS	Embezzle; friendly with trial lawyers	D			Inv Indt NG Emb Hungjury Indt Conv '05	2/24/2002
Amy	Tuck	Lt. Gov. candidate	MS	MS	Trial lawyer loan			DtoR	Inv	5/28/2003
John	Whitfield	fmr. Circuit Ct. Judge	Harrison Co., MS	MS	Friendly with trial lawyers	D			Inv Indt Hungjury Re Indt Conv ('05)	6/8/2003
Conrad	Burns	U.S. Senator	MT	MT	Pay for play		R		Inv	12/17/2005
Gary	Racine	Sheriff	Glacier Co., MT	MT	Fraud	D			Inv Indt PG	5/5/2004
Frank	Ballance	Fmr State Senator, Congressman	Warrenton, No.Carolina	NC	Fed. Invest. of drug grant	D			Inv Indt PG	12/22/2003
Garey M.	Ballance	District Judge	Norlina, NC	NC	Failure to file tax return	D			Inv Indt PG (misdemeanor)	9/3/2004
Jim	Black	State Representative	NC	NC	Public corruption	D			Inv Indt PG (4-yrs) (Also state conviction)	7/20/2006
William	Culpepper	State Legislator	Edenton, NC	NC	Public corruption invest.	D			Inv (His lawyer said only a witness; not a target 7/20/2006)	7/20/2006
Sammuel T.	Currin	Fmr Sup. Ct. Judge;Fmr US Atty.	NC	NC	Money laundering; obstructing		R		Inv Indt PG (9/4/2006)	11/5/2005
Michael	Decker	State Representative	Forsyth Co., NC	NC	Public corruption accepting bribe			RtoD	Inv Indt PG	7/20/2006
Van	Duncan	Sheriff	Buncombe Co., NC	NC	Gaming machine investigation	D			Inv	8/8/2007
Kenneth L.	Fox	Fmr Mayor	East Spencer, NC	NC	Public corruption	D			Inv Indt PG (41-mos 6/23/2006)	5/5/2005
W. Ronald	Hash	Fmr Alderman	East Spencer, NC	NC	Public corruption	D			Inv Indt PG (6/14/2006)	5/5/2005
Ronald	Hewett	Sheriff	Brunswick Co., NC	NC	Campaign finance investigation	D			Inv	6/7/2007
Robert	Holloman	State Senator	Ahoskie, NC	NC	Public corrupt Ballance case	D			Inv Indt PG	11/7/2003
Homer	Honeycutt	Mayor	Buncombe Co.,NC	NC	DMV ticket fixing for contributions	D			Inv No Charge (7/9/2003)	2/4/2002
Glenn	Maynor	Fmr Sheriff	Robeson Co., NC	NC	Misapplying federal funds	D			Inv Indt PG (9/26/2007)	9/13/2007
Bobby	Medford	Sheriff	Buncombe Co., NC	NC	DMV ticket fixing for contributions	D			Inv No Charge (7/9/2003)	2/4/2002
Bobby	Medford	Fmr Sheriff	Buncombe Co., NC	NC	Campaign finances from gaming	D			Inv	6/30/2007
Paul	Miller	State Legislator	Durham Co., NC	NC	Student loan pay invest.	D			Inv Indt PG	6/8/2006
Ron	Moore	District Attorney	Buncombe Co., NC	NC	DMV ticket fixing for contributions	D			Inv No Charge (7/9/2003)	8/7/2002
Richard	Morgan	House Speaker	Moore Co., NC	NC	Public corruption invest.		R		Inv (Morgan testified but said he wasn't a target 3/27/2007)	3/24/2007
Paul	Newby	Supreme Court Justice	NC	NC	Violated Hatch Act			NP	Inv Dp	11/9/2004
Elected	Official	Alderman	East Spencer, NC	NC	Public corruption invest.	D			Inv	5/10/2005
Meg Scott	Phipps	Agriculture Comm.	NC	NC	Campaign finance extortion	D			Inv Indt PG	5/31/2002
Drew	Shapiro	Manalapan Twp Council	Monmouth Co., NJ	NC	Wide-ranging Vuola investigation	D			Inv	11/2/2004
Michael	Every	Fmr Mayor, St. Sen.	Minnewaukan, ND	ND	Use of pickup trucks	D			Inv (Gave to State)	8/26/2005
Tammy	Grady-Jacobs	Fmr School Board Member	Twin Buttes, ND	ND	Embezzlement and fraud			NP	Inv Indt	11/9/2006
Darcy	Lone Bear	Sch Bd member	Twin Buttes, ND	ND	Embezzlement and fraud			NP	Inv Indt PG (6/1/2007)	11/9/2006
Richard	Peterson	City councilman	Minnewaukan, ND	ND	City truck purchase			NP	Inv	8/26/2005
Hank	Starr	Sch Bd member	Twin Buttes, ND	ND	Embezlement and fraud			NP	Inv Indt	11/9/2006
Milissa	Starr	Sch Bd President	Twin Buttes, ND	ND	Embezzlement and fraud			NP	Inv Indt PG (6/1/2007)	11/9/2006
Burton J.	Cohen	St. Sen; US Senate Cand	NH	NH	Campaign Fund violations	D			Inv (Dropped out of race)	11/14/2005
Vincent	Palumbo	Fmr State House Majority Leader	NH	NH	Income Tax evasion		R		Inv Indt PG (9/5/2007)	4/18/2007
Rebecca	Aaronson	Manalapan Twp Council	Monmouth Co., NJ	NJ	Wide-ranging Vuola investigation	D			Inv	11/2/2004

Frank	Abate	Fmr Council; Fmr Congress cand	Moroboro Twp., NJ	NJ	Public corruption	D		Inv Indt	7/25/2006
Jayson	Adams	Fmr Pres, Bd of Education	Pleasantville, NJ	NJ	Bribes for contracts sting	D		Inv Crim. Complaint	9/6/2007
Roy	Barnes	Governor; Gub. candidate	GA	NJ	Collusion. Van Streat dismissal	D		Inv	10/22/2002
Michael	Battista	Commissioner	Beach Haven, NJ	NJ	Corruption investigation	D		Inv	9/1/2006
Charles	Bell	Councilman	Newark, NJ	NJ	UMDNJ corruption investig.	D		Inv	4/4/2006
John O.	Bennett III	State Senator; Co-Pres	Monmouth, NJ	NJ	Investigating double billing		R	Inv Clsd	3/19/2003
J. Christian	Bollwage	Mayor	Elizabeth, NJ	NJ	Investigating corruption	D		Inv	5/7/2002
Sara B.	Bost	Mayor	Irvington, NJ	NJ	Corruption; witness tampering	D		Inv Indt PG (4/23/2003)	4/4/2002
William C.	Braker	Freeholder	Hudson Co., NJ	NJ	Extortion for contracts	D		Inv Indt PG (41-mos 12/22/2004)	12/11/2002
Alfred W.	Bridges	Former mayor	Ewing, Mercer Co.,	NJ	County corrupt: Crack possession	D		Inv Indt PG	2/18/2004
Thomas	Broderick	Fmr Councilman	Maroboro, NJ	NJ	Extortion		R	Inv Indt (2/22/2005)	2/18/2005
Wayne R.	Bryant	State Senator	Camden Co., NJ	NJ	UMDNJ corruption investigation	D		Inv Indt (3/29/2007)	9/27/2006
Barbara	Buono	State Senator; Conference Chair	District 18, NJ	NJ	Pork appropriations investigation	D		Inv	4/24/2007
Grover	Burrows	Marlboro Twp Council	Monmouth Co., NJ	NJ	Wide-ranging Vuola investigation	D		Inv	11/2/2004
Craig	Callaway	City council President	Atlantic City, NJ	NJ	Public corruption	D		Inv Indt PG	10/17/2006
Maurice 'Pete'	Callaway	Fmr Bd of Educ; Councilman	Pleasantville, NJ	NJ	Bribes for contracts sting	D		Inv Crim. Complaint	9/6/2007
Charles W.	Cart	Fmr Committeeman; Chair	Sussex Co., NJ	NJ	Violation of bankruptcy trusteeship	D		Inv Indt PG (6-MOS 3/7/2007)	2/23/2005
Gayle	Chaneyfield-Jenkins	Councilwoman	Newark, NJ	NJ	UMDNJ corruption investig.	D		Inv	4/4/2006
Richard	Codey	State Senator; Senate President	Essex, NJ	NJ	Pork appropriations investigation	D		Inv	6/30/2007
James G.	Condos	Councilman	Asbury Park, NJ	NJ	Selling favors		R	Inv Indt PG	1/12/2002
Joseph	Coniglio	State Senator	Bergen Co., N.J.	NJ	UMDNJ corruption investig.	D		Inv	3/30/2007
Jon S.	Corzine	Governor	Hoboken, NJ	NJ	Loans for union endorsement	D		Inv	8/12/2005
Paul	Coughlin	Mayor	Hazlet, NJ	NJ	Public corruption		R	Inv Indt PG (2-yrs 9/22/2006)	2/23/2005
Mary	Cozzolino	Manalapan Twp Mayor	Monmouth Co., NJ	NJ	Wide-ranging Vuola investigation	D		Inv	11/2/2004
David	Crabiel	Freeholder Director	Middlesex Co., NJ	NJ	Public corruption	D		Inv	7/8/2004
Mildred	Crump	City council President	Newark, NJ	NJ	Bribes for contracts sting	D		Inv (charged chief of staff)	9/6/2007
Craig	Cryan	State Assemblyman	Union Co., NJ	NJ	Contributions from charities	D		Inv	3/29/2007
Glenn	Cunningham	Fmr Mayor	Jersey City, NJ	NJ	City land sales	D		Inv (died 5/25/2004)	7/4/2007
Nidia	Davila-Colon	County freeholder	Hudson Co., NJ	NJ	Accepting bribes	D		Inv Ind Conv	10/30/2002
Joseph	DeLisa	Deputy Mayor	W. Long Branch, NJ	NJ	Public corruption	D		Ind Indt PG (11/15/2006)	3/6/2005
David	Delle Donna	Mayor	Guttenberg, NJ	NJ	Cp contrib by human trafficker	D		Inv	1/25/2007
Barry	Denkensohn	Marlboro Twp Council	Monmouth Co., NJ	NJ	Wide-ranging Vuola investigation	D		Inv	11/2/2004
Donald	Difrancesco	Acting Gov; Gubernatorial Cand	NJ	NJ	Invest. ethics allegations		R	Inv	4/22/2002
Joseph	DiVincenzo	Freeholder; Executive Candidate	Newark,Essex Co. NJ	NJ	Corruption investigation	D		Inv (Rec'd letter saying not a target)	5/28/2002
Joseph	Foy, Sr.	Mayor	Burlington Twp NJ	NJ	Tax evasion	D		Inv Indt PG	11/15/2004
David	Fuller	Fmr School Board Member	Newark, NJ	NJ	Accepting bribes	D		Inv Indt	10/12/2001

Tom	Giblin	Executive Candidate	Essex County, NJ	NJ	Campaign investigation	D		Inv Dp	5/28/2003
Kenneth	Gibson	Fmr. Mayor	Newark, NJ	NJ	Fraud	D		Inv Indt PG	10/12/2001
John A.	Girgenti	State Senator; Majority Whip	District 35, NJ	NJ	Pork appropriations investigation	D		Inv	4/24/2007
Robert	Gordon	State Senator	Bergen, NJ	NJ	Secret grant-making invest	D		Inv	4/24/2007
Thomas	Greenwald	Town Council	Far Hills, N.J.	NJ	Money laundering;defrauding IRS		R	Inv Indt PG (5/10/07)	3/10/2005
John	Gural	Fmr Councilman; Mayor	Palmyra, NJ	NJ	Investigating public corruption	D		Inv	12/4/2005
Mims	Hackett, Jr.	Mayor; State Assemblyman	Orange, NJ	NJ	Bribes for contracts sting	D		Inv Crim. Complaint	9/6/2007
John J.	Hamilton	City Councilman	Asbury Park, NJ	NJ	Extortion	D		Inv Indt	2/23/2005
Robert	Hyer	Councilman	Keyport, NJ	NJ	Accepting bribes		R	Inv Indt (Died)	2/23/2005
Richard	Iadanza	Deputy Mayor	Neptune Twp, NJ	NJ	Public corruption		R	Inv Indt PG (10/11/2006)	6/8/2005
Anthony	Impreveduto	State Assemblyman	Hudson Co., NJ	NJ	Public corruption	D		Inv (Indt PG at state level)	10/18/2004
Marcellus	Jackson	Councilman	Passaic, NJ	NJ	Bribes for contracts sting	D		Inv Crim. Complaint	9/6/2007
Cahill	James	Mayor	New Brunswick, NJ	NJ	Corruption investigation	D		Inv	12/4/2005
Sharpe	James	Fmr Mayor; State Senator	Newark, NJ	NJ	City land sales	D		Inv Indt (July 12, 2007)	9/10/2006
Robert C.	Janiszewski	Fmr County Executive	Hudson Co., NJ	NJ	Extortion for contracts	D		Inv Indt PG (41-mos 11/5/2006)	9/7/2001
Gibb	Jones	Councilman	Atlantic City, NJ	NJ	Public corruption	D		Inv Indt PG (5-yrs probation 5/2/2007)	10/17/2006
Ellen M.	Karcher	State Senator	Monmouth Co., NJ	NJ	Public corruption investigation	D		Inv Clsd	2/7/2005
Bernard	Kenney, Jr	State Senator; Majority Leader	District 33, NJ	NJ	Pork appropriations investigation	D		Inv	4/24/2007
Paul	Kolvaski	Marlboro Twp Council	Monmouth Co., NJ	NJ	Wide-ranging Vuola investigation	D		Inv	11/2/2004
Lorenzo	Langford	Mayor	Atlantic City, NJ	NJ	Hatch Act violation	D		Inv	8/20/2004
Harry	Larrison, Jr.	Fmr Freeholder Director	Monmouth Co., NJ	NJ	money laundering		R	Inv Indt	3/11/2005
Peter	Lavilla	Fmr Mayor; Co. Exec cand.	Guttenberg, Hudson Co., NJ	NJ	Misused campaign funds	D		Inv Indt PG	7/24/2003
Bob	Leather	Fmr Mayor	Palmyra, NJ	NJ	Investigating public corruption		Rtol	Inv	12/4/2005
Raymond	Lesniak	State Senator	Union, NJ	NJ	UMDNJ corruption investig.	D		Inv	4/4/2006
Bob	Levy	Mayor	Atlantic City, NJ	NJ	Vietnam Service record vet benefits	D		Inv	8/8/2006
Gerald J.	Luongo	Mayor Washington Twp.	Gloucester Co. NJ	NJ	Misused campaign funds		R	Inv Infor PG	11/1/2001
John A.	Lynch	Fmr President NJ Senate	Middlesex Co., NJ	NJ	Investigating public corruption	D		Inv Indt PG (39-mos 12/19/2006)	7/8/2003
Patrick G.	Malloy	Mayor	New Hanover, NJ	NJ	Witness tampering	D		Inv Indt. PG (6-MOS 2/17/2004)	6/18/2003
James R.	Mathes	Fmr Council President	Camden, NJ	NJ	Corruption	D		Inv Indt Conv (27-mos)	5/7/2002
James T.	McCormick	Member, Bd of Education	Pleasantville, NJ	NJ	Bribes for contracts sting	D		Inv Crim. Complaint	9/6/2007
James E.	McGreevey	Fmr Mayor; Governor	Woodbridge, NJ	NJ	Invest. staff's associations	D		Inv (FBI Interviewed 8/20/2004)	5/7/2002
Robert	Menendez	Fmr U.S. Congress; U.S.Senator	NJ	NJ	Public corruption real estate	D		Inv	8/10/2006
John J.	Merla	Mayor	Keyport, NJ	NJ	Accepting bribes		Rtolto D	Inv Indt PG (1/17/2007)	2/23/2005
Milton	Milan	Fmr Mayor	Camden, NJ	NJ	Corruption	D		Inv Indt Conv (7-years 6/16/2001)	6/16/2001
James	Mione	Marlboro Twp Council	Monmouth Co., NJ	NJ	Wide-ranging Vuola investigation	D		Inv	11/2/2004
Stuart	Moskovitz	Manalapan Twp Council	Monmouth Co., NJ	NJ	Wide-ranging Vuola investigation	D		Inv	11/2/2004

Raymond J.	O'Grady	Fmr Mayor; Committeeman	Middleton, NJ	NJ	Public corruption, taking bribes		R	Inv Indt Conv	5/7/2005
Peter	Perez	Former Twp Commissioner	North Bergen, NJ	NJ	Free home rennovations	D		Inv Indt PG (7/22/2002)	7/8/2002
James	Pressley	Member, Bd of Education	Pleasantville, NJ	NJ	Bribes for contracts sting	D		Inv Crim. Complaint	9/6/2007
Samuel	Rivera	Mayor	Passaic, NJ	NJ	Bribes for contracts sting	D		Inv Crim. Complaint	9/6/2007
Raymon	Rosario	Councilman	Atlantic City, NJ	NJ	Public corruption	D		Inv Indt PG (5-mos & 5-mos home denten 5/2/2007)	10/17/2006
Anthony J.	Russo	Fmr Mayor; Councilman	Hoboken, NJ	NJ	Extortion and bribery	D		Inv Indt PG (30-mos)	9/25/2003
Frank	Ryan	Mayor	Bound Brook, NJ	NJ	Investigating fixing housing fines	D		Inv NoChrge Fair housing decree	8/26/2003
Nicholas J.	Sacco	Fmr Mayor; State Sen	Bergen Hudson Co	NJ	Investigating Corruption	D		Inv (his driver PG)	12/9/2001
Paul	Sarlo	State Sen; Asst Maj Lead	Bergen, NJ	NJ	Secret grant-making invest	D		Inv	4/24/2007
Kenneth E.	Saunders	Mayor	Asbury Park, NJ	NJ	Public corruption	D		Inv Indt Conv (33-MOS 7/8/2004)	4/4/2003
Kenneth E.	Saunders	Fmr Mayor	Asbury Park, NJ	NJ	False tax returns	D		Inv Indt (2/3/2004) PG	2/3/2004
Matthew V.	Scannapieco	Former mayor	Marlboro, NJ	NJ	Investigating corruption		R	Inv Indt PG	6/27/2004
Joseph	Scarpelli	Mayor	Brick Township	NJ	Public corruption	D		Inv Indt PG (1/8/2007)	10/11/2006
Bill	Scherer	Manalapan Twp Council	Monmouth Co.	NJ	Wide-ranging Vuola investigation	D		Inv	11/2/2004
Adam	Schneider	Mayor	Long Branch, NJ	NJ	Corruption investigation	D		Inv	9/7/2001
Nicholas	Scutari	State Senator	Union Co., NJ	NJ	UMDNJ corruption investig.	D		Inv	3/29/2007
Charles	Sharpe	Elected Agri. Comm.	SC	NJ	Cock Fighting ring		R	Inv Indt PG (also charged at state)	7/29/2004
Donald	Silas	Fmr School Board Member	Newark, NJ	NJ	Accepting bribes	D		Inv Indt	2/12/2001
Mary	Singer	Marlboro Twp Council	Monmouth Co.	NJ	Wide-ranging Vuola investigation		R	Inv	11/2/2004
Albio	Sires	Assembly Speaker; Mayor	West New York	NJ	Investigating corruption	D		Inv (on-going 8/5/2004)	5/12/2002
Ali	Sloan-El	Fmr Councilman	Camden, NJ	NJ	Public corruption		ItoD	Inv Indt PG	10/1/2005
Sheila	Solomon	Councilmember	Asbury Park, NJ	NJ	Investigating public corruption	D		Inv Clsed	7/22/2003
Jonathan	Soto	Councilman	Passaic, NJ	NJ	Bribes for contracts sting		R	Inv Crim. Complaint	9/6/2007
Brian P.	Stack	State Assemblyman	Union Co., NJ	NJ	UMDNJ corruption investig.	D		Inv	3/29/2007
Alfred E.	Steele	State Assemblyman	Patterson, NJ	NJ	Bribes for contracts sting	D		Inv Crim. Complaint	9/6/2007
Scetteducati	Steve	Mayor	Emerson, NJ	NJ	Improprieties in police fund		R	Inv Clsd	3/17/2007
Bill C.	Stewart	City Council	Gadsden, AL	NJ	Public corruption investigation	D		Inv	2/15/2006
Robert G.	Torricelli	U.S. Senator	NJ	NJ	Accepting contributions	D		Inv Clsd (by U.S Atty SoDist NY 1/4/2002)	1/6/2002
James W.	Treffinger	Co. Exec; US Sen Cand	Essex County, NJ	NJ	Obstruction of Justice		R	Inv Indt PG (13-months)	4/22/2002
Shirley K.	Turner	State Senator; Pro Tem	District 15, NJ	NJ	Pork appropriations investigation	D		Inv	4/24/2007
Zachary V.	Turner	Councilman	East Orange, NJ	NJ	Extortion; mail fraud	D		Inv Indt PG	3/25/2004
Leo	Vartan	Fmr Mayor	Kearny, NJ	NJ	Diverting cp funds to personal use		R	Inv Infor PG (Testified against A. J Russo)	11/8/2002
Rafael	Velez	Member, Bd of Education	Pleasantville, NJ	NJ	Bribes for contracts sting	D		Inv Crim. Complaint	9/6/2007
Joseph F.	Vitale	State Sen; Deputy Maj Ldr	District 19, NJ	NJ	Pork appropriations investigation	D		Inv	4/24/2007
Joan	Voss	State Senator	Bergen, NJ	NJ	Secret grant-making invest	D		Inv	4/24/2007
Richard	Vuola	Fmr Marlboro Twp Council	Middlesex Co.	NJ	bribery; false tax returns	D		Inv Indt PG	10/29/2004
Brian	Wahler	Mayor	Piscatasay, NJ	NJ	Public corruption	D		Inv	7/6/2004
Warren S.	Wallace	Freeholder	Gloucester Co.	NJ	UMDNJ public corruption	D		Inv	6/5/2006

Terrance D.	Weldon	Mayor	Ocean Twp, NJ	NJ	Extortion		R		Inv Indt PG (58-mos 8/27/07)	10/10/2002
John "Fazz"	Zambrano	Councilman	Long Branch, NJ	NJ	Accepting bribe	D			Inv Indt PG (7/7/2006)	7/21/2006
Paul	Zambrano	Mayor	W. Long Branch	NJ	Public corruption	D			Inv Indt PG	10/11/2006
Vincent	Zappulla	Dem. Committeeman	North Bergen	NJ	Inflated insurance claim	D			Inv Infor PG (6/12/2002)	3/30/2002
Manny	Aragon	Fmr State Senator	Albuquerque, NM	NM	Courthouse Const. fraud	D			Inv Indt (3/30/2007)	7/15/2006
Michael	Kavanaugh	Dist. Judge	Bernalillo Co.	NM	Courthouse Const. fraud	D			Inv	11/27/2006
Michael	Montoya	Fmr State Treasurer	NM	NM	Invest ties to companies; extortion	D			Inv Indt PG (11/9/2005; 40-mos 9/26/2007)	9/16/2005
Ken	Schultz	Fmr Mayor	Albuquerque, NM	NM	Courthouse Const. fraud	D			Inv Indt PG (3/30/2007)	11/23/2006
Robert	Vigil	State Treasurer	NM	NM	Invest. ties to companies; extortion	D			Inv Indt Conv (1 cnt attmptd extor 10/1/06; 37-mos	9/16/2005
Bob	Beckett	District Atty.	Nye Co., NV	NV	Vote fraud	D			Inv	10/23/2002
Shelley	Berkley	U.S. Congress	NV	NV	Invest. contributor	D			Inv	2/21/2003
Ed	Bernstein	U.S. Senate Cand., 2002	NV	NV	Invest. contributor	D			Inv	2/21/2003
Marcus	Conklin	State Assembly	Carson City NV	NV	Voter fraud	D			Inv (Indt at state level)	4/6/2003
Jim	Gibbons	Gov., Fmr Congressman	NV	NV	Gifts for votes		R		Inv	2/15/2007
Oscar	Goodman	Mayor	Las Vegas, NV	NV	Association investigation	D			Inv No charge	2/24/2003
Dario	Herrera	Fmr Commiss; Cong Cand	Las Vegas, NV	NV	Trading favors	D			Inv Indt Conv (50-mos 8/21/2006)	11/17/2003
Erin	Kenny	Co. Comm; Lt. Gov. Cand.	Las Vegas, NV	NV	Trading favors	D			Inv Indt PG (30-mos 7/18/2007)	5/16/2003
Mary	Kincaid-Chauncey	Chair Co. Commission	Las Vegas, NV	NV	Trading favors; Extortion	D			Inv Indt Conv (30-mos 8/31/2006)	11/13/2003
Robert	Lane	District Judge	Nye Co., NV	NV	Vote fraud			NP	Inv	10/23/2002
Wade	Lieseke	Sheriff	Nye Co., NV	NV	Vote fraud	D			Inv	10/23/2002
Lance	Malone	Fmr County commissioner	Las Vegas, NV	NV	Bribery		R		Inv Indt PG (9/18/2006)	5/18/2003
Michael	McDonald	Fmr councilman	Las Vegas, NV	NV	Association investigation	D			Inv No charge	2/24/2003
Michael	McDonald	Fmr councilman	Las Vegas, NV	NV	Investigating loans received	D			Inv	7/23/2007
Sandra	Merlino	County Clerk	Nye Co., NV	NV	Vote fraud	D			Inv	10/23/2002
Harry	Reid	U.S. Senate	Nevada	NV	Cmpgn monies for hotel staff gifts	D			Inv (FEC voted to dismiss 5/1/2007)	10/15/2006
Linwood E.	Tracy, Jr.	Legislative Candidate	Fallon, NV	NV	Threatening government officials			IA	Inv Indt	9/5/2004
Myrna	Williams	County Commissioner	Las Vegas, NV	NV	Corruption investigation	D			Inv	5/16/2003
Vincent	Anello	Fmr councilman; Mayor	Niagra Falls, NY	NY	Investigation non-repaid loan	D			Inv	5/6/2005
Joseph	Bruno	State Senate	Brunswick, NY	NY	Corruption investigation		R		Inv (on-going)	12/19/2006
Yvette D.	Clarke	City-Council	Brooklyn, NY	NY	Investigating development projects	D			Inv	3/29/2002
Hillary	Clinton	U.S. Senator	NY	NY	Invest. campaign funding	D			Inv (Indt fmr finance Dir.)	1/7/2005
Gloria	Davis	State Assembly	Bronx, NY	NY	Corruption	D			Inv (Indt PG at state level)	1/5/2003
Efrain	Gonzalez	State Senator	Bronx Co., NY	NY	Stealing from a non-profit org.	D			Inv Indt (8/26/2006)	7/15/2004
Efrain	Gonzalez	State Senator	Bronx Co. NY	NY	Use of state charities money	D			Inv Indt (12/13/2006)(also Indt at state)	12/13/2006
John	Gosek	Mayor	Oswego, NY	NY	Soliciting sex with minors		R		Inv Indt PG	9/8/2005
Richard R.	Green	State Assembly	Bronx Co. NY	NY	Investigating corruption	D			Inv	2/10/2004
Steven	Hurley	Town Supervisor	Stony Point, NY	NY	Embezzling campaign funds		R		Inv (Indt, PG at state level)	6/11/2003
Steve	Levy	County Executive	Suffolk Co., NY	NY	Investigating corruption	D			Inv	4/22/2004
Brian	McLaughlin	Assemblyman	Queens, NY	NY	Racketeering; embezzlement	D			Inv Indt (10/18/2006)	3/3/2006

Jeanine	Pirro	Prosecutor; U.S. Sen Cand	Westchester Co.,	NY	Tax evasion		R		Inv (realtor husband Indt and PG)	12/16/2006
Wayne	Prospect	Former Co. Legis Cand	Suffolk Co., NY	NY	Investigating corruption	D			Inv (Indt Conv at County)	4/22/2004
Roberto	Ramirez	Fmr State Senator	Bronx Co., NY	NY	Investigating corruption	D			Inv	7/15/2004
Jose	Rivera	State Assemblyman	Bronx Co., NY	NY	Investigating corruption	D			Inv	7/15/2004
Angel	Rodriguez	City-Council	Brooklyn, NY	NY	Extortion on development projects	D			Inv Indt PG	3/29/2002
Charles	Schumer	U.S.Senator	NY	NY	Campaign use of state funds	D			Inv	6/30/2004
Thomas R.	Suozzi	County Executive	Nassau Co., NY	NY	Investigating corruption	D			Inv (aide acquitted in state court)	12/21/2003
Guy J.	Velella	State Senator	NY	NY	Bribery		R		Inv (Also investigated by state)	2/10/2004
Patrick	Williams	County legislator	Nassau Co., NY	NY	Mortgage fraud investigation	D			Inv Indt Conv (fined 5-years probation)	10/28/2001
Capri	Cafaro	Cand. for Congress;State Senator	OH 14th Dist.; 13th Dist.	OH	Traficant investigation	D			Inv (Granted Immunity 2003)	2/25/2002
Nick	Capurro	Fmr Coroner	Clermont Co., OH	OH	Illegally prescribing meds		R		Inv Indt (11/22/2002) PG (9/4/2007)	11/23/2002
Joseph	Deters	State Treasurer	OH	OH	Illegal campaign contributions		R		Inv No Charge (7/11/2004)	5/6/2004
Vicky	Fulk	Clerk/Treasurer	Hebron, OH	OH	Embezzlement			NP	Inv Indt PG (30-DAYS 8/14/2007)	3/14/2007
Joseph	Jones	Councilman	Cleveland, OH	OH	Public corruption, extortion	D			Inv Indt PG 6-mos home confinement	1/18/2005
Paul H.	Jones	Mayor	Ravenna, OH	OH	Conflict of interest; tax evasion	D			Inv Indt PG (16-months 3/23/2007)	12/11/2006
Tubb	Jones	U.S. Congressman	OH	OH	Improper lobbyist supported trip	D			Inv	4/21/2005
Robert A.	McCloskey	Councilman	Toledo, OH	OH	Public corruption	D			Inv Infor PG (27-MOS 7/21/2006)	4/21/2006
Bob	Ney	U.S. Congress	OH	OH	Public corruption		R		Inv Indt PG (19/13/2006) (30-mos +)	8/6/2006
Emmanuel	Onunwor	Mayor	East Cleveland	OH	Soliciting bribes	D			Inv Indt Conv (8/31/2004)	4/22/2004
James	Traficant	U.S. Congressman	Youngstown, OH	OH	Bribery; misuse of aides; tax	D			Inv Indt Conv	8/21/2001
Michael R.	White	Former Mayor	Cleveland, OH	OH	Administration's corruption	D			Inv Dp	7/21/2001
Dan	Boren	U.S. Congressman	Shawnee, OK	OK	Campaign contributions	D			Inv	3/12/2007
Randall	Erwin	Fmr State Repres	Nashoba, OK	OK	Campaing contributions	D			Inv	3/12/2007
Carroll	Fisher	Insur Comm Can US Sen	OK	OK	Embezzlement; illegal charity	D			Inv (Indt Conv at State level)	2/22/2004
Jerry	Hefner	Fmr State Repres	Wagoner, OK	OK	Campaign contributions	D			Inv	3/12/2007
Brad	Henry	Governor	OK	OK	Campaign contributions invest.	D			Inv	3/12/2007
Melvin Ellis	Holly	Sheriff	Latimer Co., OK	OK	Sexual battery; Lying to FBI	D			Inv Indt Conv(8/16/05)(25-yrs 11/23/05)	10/21/2004
James E.	Lane	Fmr state sen; Maj. leader	OK	OK	Invest. No show job,finances	D			Inv Indt PG (3/28/2003) (3-yrs probation)	3/11/2003
Mike	Mass	State Representative	Higgins, OK	OK	Public corruption	D			Inv Infor (4/12/2007)	3/12/2007
Jeff	McMahan	State Auditor	OK	OK	campaign contrib; trips	D			Inv	3/12/2007
Michael Don	Moss	U.S. Congress Candidate	Hartshorne, OK	OK	Campaign contributions	D			Inv Indt	3/12/2007
Walter Lenn	Roberts	Fmr Congressional Cand	OK	OK	Investigating campaign finances	D			Inv Indt PG (3/5/2003) (2-yrs supervised)	1/15/2003
Clifton H.	Scott	Fmr State Auditor/Inspect	OK	OK	Campaign contrib; trips	D			Inv	3/30/2007
Gene	Stipe	State senator	McAlester, OK	OK	Invest. campaign finances	D			Inv Indt PG perjury (5-yrs prob 1/30/04)	3/8/2003
Gene	Stipe	Fmr State Senator	McAlester, OK	OK	Alleged corruption	D			Inv Indt (10/5/2007)	6/2/2007
Kathy	Taylor	Mayoral cand.	Tulsa, OK	OK	Campaign contributions	D			Inv	4/2/2006
Tom	Potter	Mayor	Portland, OR	OR	Initiating investigation	D			Inv	5/25/2006
Robert	Brady	U.S. congressman	PA	PA	Corruption investigation	D			Inv Clsd	2/27/2006
Joseph	Corropolese	Elect. Constable	Norristown, PA	PA	Corruption investigation		R		Inv Indt PG	5/5/2003

Pete	DeFazio	Sheriff; Sheriff cand.	Allegheny Co.	PA	Campaign finances;staff Xmas gifts	D			Inv Indt PG (5-yrs prob; 6-mos H.D. 2/23/07)	1/14/2005
John	Dougherty	Mayor candidate	Philadelphia, PA	PA	Public corruption	D			Inv	11/16/2006
Vincent J.	Fumo	State Senator	Philadelphia, PA	PA	Investigating charity ticket fixing	D			Inv Indted (2007)	1/26/2005
Joseph	Jeffe	Com. pleas judge	Allegheny Co.	PA	Extortion	D			Inv	8/13/2002
Michael T.	Joyce	Superior Court Judge	Erie Co., PA	PA	Scamming his insurers		R		Inv Indt (8/16/2007)	6/10/2007
Paul	Kanjorski	US Congressman	PA	PA	Invest. ties to companies	D			Inv	8/31/2002
Ted	LeBlanc	Mayor	Norristown, PA	PA	Corruption bribery investigation		R		Inv Indt Conv (4/17/2006)	4/30/2004
Jeffrey	Manning	Common Pleas Judge	Allegheny Co.	PA	Sharing Steeler tickets with lawyer	D			Inv	6/19/2007
Marjorie	Margolies-Mezvinsky	Fmr Congresswoman	PA	PA	Fraud investigation	D			Inv Not charged	3/23/2001
Richard 'Rick'	Mariano	Council member	Philadelphia, PA	PA	Corruption	D			Inv Indt Conv (Prison 3/17/2006)	10/22/2005
Ernest L.	Marraccini	District Judge	Allegheny Co.	PA	Witness tampering	D			Inv Indt PG (16-mos + fine 6/21/2007)	10/25/2005
Patrick J.	Murphy	US Congressman	Bristol, PA	PA	Campaign contributions	D			Inv	6/26/2007
Thomas	Murphy	Mayor	Pittsburgh, PA	PA	Awarding fire fighter contracts	D			Inv Agreement	1/10/2005
Tim	Murphy	U.S. Congressman	Pittsburgh, PA	PA	Campaign contributions		R		Inv	3/16/2007
Donna	Reed-Miller	Councilwoman	Philadelphia, PA	PA	Public corruption ticket fixing	D			Inv	1/26/2005
Charlie	Robertson	Mayor	York, PA	PA	Inciting civil rights murder in '69	D			Inv Indt (Acquitted)	5/25/2001
Ernest W.	Scott	Fmr. Councilman	Norristown, PA	PA	Drug investigation	D			Inv Indt PG	2/2/2002
Dennis	Skosnik	Fmr Mayor;Allegheny Co., Dpy Sheriff	McKees Rocks, PA	PA	Mixing campaign/administration	D			Inv Indt	11/22/2005
John F.	Street	Mayor	Philadelphia, PA	PA	Investigating corruption	D			Inv	10/20/2003
Milton	Street	Mayoral Cand.	Philadelphia, PA	PA	Corruption investigation	D			Inv	11/28/2006
Cyril	Wecht	Coroner	Allegheny Co.	PA	Public corruption; job for profit	D			Inv Indt	2/6/2006
John	Weinstein	Treasurer	Allegheny Co.	PA	Absentee ballot fraud	D			Inv (state had already dropped)	1/27/2006
Curt	Weldon	Fmr U.S. Congressman	PA	PA	Trading political favors		R		Inv	10/13/2006
Anibal	Acevedo Vilá	Governor	Puerto Rico	PR	Campaign gift	D			Inv (after state investigated)	10/4/2006
Edison Misla	Aldarondo	House Minority leader	Puerto Rico	PR	Corruption investigation			NPP	Inv Ind PG (6-years 11/17/2004)	10/26/2001
Jaun Laureano	Cruzado	Mayor	Vega Alta, P.R	PR	Extortion	D			Inv	10/24/2001
Jose	Granados-Navedos	House of Representatives	Puerto Rico	PR	Extortion			NPP	Inv Indt PG (4/15/2004)	1/30/2004
Jose Luis	Lopez	Representative	Puerto Rico	PR	Corruption investigation			NPP	Inv	10/26/2001
Steven	Alves	State Senator	West Warrick	RI	Public corruption	D			Inv	10/10/2006
John A.	Celona	State Senator	No. Providence	RI	Taking bribes via employment	D			Inv Indt PG (also indt at state)	12/10/2003
Vincent A. Buddy	Cianci	Mayor	Providence, RI	RI	Extortion; racketeering			I	Inv Indt Conv	4/12/2001
Joseph	DeLuca	Councilman	Providence, RI	RI	Public corruption		R		Inv	10/25/2002
Jeanne-Marie	DiMasi	Fmr. Councilwoman	West Warwick	RI	Public corruption	D			Inv	10/10/2006
John	Harwood	State Representative	RI	RI	Public corruption	D			Inv	9/13/2003
William V.	Irons	State Senate	RI	RI	Public corruption	D			Inv	1/1/2004
Dean L.	Lees, Jr.	Fmr. Councilman	West Warwick	RI	Public corruption	D			Inv	10/10/2006
John	Lombardi	Councilman	Providence, RI	RI	Public corruption	D			Inv	10/25/2002
Thomas	Lynch	Fmr State Senator	Warrick, RI	RI	Public corruption	D			Inv	2/4/2007

Joseph	Montalbano	State Senator	Providence, RI	RI	Public corruption	D		Inv	10/10/2006
Dominick J.	Rugerrio	State Senator	Providence, RI	RI	Public corruption	D		Inv	8/8/2005
Carl Larue	Alford	Fmr Mayor	Lake City, SC	SC	Counterfeit currency possession	D		Inv Indt (4/26/2006) PG (5-mos; 3-yrs sr	4/19/2006
Thomas	Ravenel	Treasurer	SC	SC	Cocaine buying/distributing		R	Inv Indt	6/19/2007
John	Rickenbacker	County Council Chair	Orangeburg Co.,	SC	Bribery	D		Inv Indt (6/21/2006)	6/9/2006
Chris R.	Sharpe	Fmr Alderman	East Spencer,	NC	Public corruption	D		Inv Indt PG (21-mos 6/23/2006)	5/10/2001
Walter	Bailey	Commissioner	Shelby Co., TN	TN	Public corruption investigation	D		Inv	12/15/2002
Julian	Bolton	Commissioner	Shelby Co., TN	TN	Public corruption investigation	D		Inv	10/29/2002
Katheryn	Bowers	State Senator	Memphis, TN	TN	Public corruption sting	D		Inv Indt PG (7/16/2007)	10/18/2004
David Leon	Bumpus	Fmr Sheriff	Paris, Henry Co.	TN	Personal use of County fire arms	D		Inv Indt (11/20/2006) PG	9/1/2006
Jerry	Cooper	State Senator	Warren Co., TN	TN	Mail and wire fraud	D		Inv Indt	8/22/2006
Joseph	Cooper	Commision Cand.	Shelby Co., TN	TN	money laundering	D		Inv Indt (10/30/2006) PG	6/30/2006
William	Cotton	Commissioner	Chattanooga,	TN	Public corruption sting	D		Inv Indt Conv (3-yrs)	5/26/2005
Ward	Crutchfield	State Senator	Chattanooga,	TN	Public corruption sting	D		Inv Indt	10/18/2004
Ronnie	Davis	State representative	Murfreesboro,	TN	Selling fraudulent passports		R	Inv Indt PG (8/31/2002)	4/30/2002
Lois	DeBerry	House Speaker	Memphis, TN	TN	Public corruption	D		Inv	6/1/2006
Roscoe	Dixon	Former State Senator	Memphis, TN	TN	Public corruption sting	D		Inv Indt Conv	10/18/2004
Edmund	Ford	Councilman	Memphis, TN	TN	bribery offenses	D		Inv Indt (10/30/2006) Re-Indt (7/11/ 07)	12/4/2006
John N.	Ford	State Senator	Memphis, TN	TN	Public corruption sting	D		Inv Indt Conv (5.5 yrs 9/29/2007)	10/18/2004
John N.	Ford	Fmr State Senator	Memphis, TN	TN	TennCare medicaid kickbacks	D		Inv Indt (12/18/2006)	12/18/2006
Bill	Frist	Fmr U.S. Senator	TN	TN	Insider trading		R	Inv	10/13/2005
Willie	Herenton	Mayor	Memphis, TN	TN	Public corruption sting	D		Inv (on-going 6/16/2007)	10/18/2004
Michael	Hooks, Jr.	School Board Member	Memphis, TN	TN	Public corruption sting	D		Inv Indt	6/20/2007
Michael A.	Hooks, Sr.	Commissioner	Shelby Co., TN	TN	Public corruption sting	D		Inv Indt PG (8/21/2006)	10/29/2002
Ulysses	Jones	State Representative	Memphis, TN	TN	Investigating public corruption	D		Inv Not charged	5/26/2005
Cleo	Kirk	Commissioner	Shelby Co., TN	TN	Public corruption investigation	D		Inv	10/29/2002
Charles	Love	School Board Member	Humboldt Co.	TN	Public corruption sting	D		Inv Indt PG (1-yr)	8/26/2007
Jeff	Miller	State Senator	Cleveland, TN	TN	Campaign contributions		R	Inv Dp (8/21/2007)	1/11/2006
Larry	Miller	State Representative	Memphis, TN	TN	Campaign contributions	D		Inv Dp	5/26/2005
Chris	Newton	State Representative	Benton, TN	TN	Public corruption sting		R	Ind Indt PG (9-mos)	10/18/2004
Rickey	Peete	Councilman	Memphis, TN	TN	bribery offenses	D		Inv Indt (10/30/2006) PG	9/12/2006
Bill	Purcell	Mayor	Nashville, TN	TN	investigating shakedowns	D		Inv	6/25/2006
D. C.	Ramsey	Fmr Sheriff	Cocke Co., TN	TN	Illegal slots; cockfighting ring		R	Inv	8/1/2005
Jim	Rout	Mayor	Shelby Co., TN	TN	Investigating campaign,		R	Inv	8/31/2001
Roger	Stanley	Former State Rep.	Burr Ridge, IL	TN	Obstruction of justice		R	Inv Indt PG	8/28/2002
Don	Sundquist	Former Governor	TN	TN	Investigating contracts		R	Inv (on-going in 2006)	10/30/2003
Joe	Towns	Representative	Memphis, TN	TN	Public corruption	D		Inv	5/25/2006
Brenda	Turner	State Representative	Chattanooga	TN	Public corruption	D		Inv No Charge	8/25/2007
J. D.	Vandercook	Sheriff	Sumner Co., TN	TN	Wire fraud		R	Inv Indt PG (2/20/07) (18-mos 5/21/07)	3/3/2006

A.C.	Wharton	Mayor	Shelby Co., TN	TN	Wide-ranging investigation	D			Inv (Indicted aide)	5/27/2005
Shep	Wilbun	Fmr Co. Comm; Juv ct Clrk	Memphis, TN	TN	Public corruption	D			Inv Dp (became state case)	6/29/2002
John M.	Beaird	State Rep. Candidate	District 149, TX	TX	Mortgage fraud scheme		R		Inv	1/9/2003
Jim	Bowles	Sheriff	Dallas Co., TX	TX	Investigating jail contract award		R		Inv (Indt as state case)	12/5/2003
Lee P.	Brown	Mayor	Houston, TX	TX	Corruption investigation	D			Inv	12/2/2002
Conrado	Cantu	Sheriff	Cameron Co.	TX	Corruption extortion bribery	D			Inv Indt (6/12/2005) PG (no bill at state)	3/2/2004
Jaime	Capelo	State Representative	San Antonio, TX	TX	Investigating corruption	D			Inv	3/29/2004
Leo	Chaney	Council member	Dallas, TX	TX	Public corruption	D			Inv on-going	6/20/2005
Anthony	Cobos	County Judge	El Paso Co., TX	TX	Corruption investigation	D			Inv	5/15/2007
Carlos	Cordova	School Board Member	El Pasp, TX	TX	Corruption investigtion	D				8/30/2007
David	Cortez	Fmr Commissioner	Webb Co., TX	TX	Accepting bribes for prison contract	D			Inv conv (3/25/2005)	1/15/2005
Evangelina	De Leon	PSJA School Bd Member	Hildago Co., TX	TX	Extortion scheme	D			Inv Indt (2/22/2007)	3/21/2007
Tom	DeLay	U.S. Congressman	TX	TX	Invest. influence peddling		R		Inv Clsd (became state case)	11/25/2004
Milton 'Mickey'	Duntley	School Board Member	Ysleta (El Paso)	TX	Corruption investigation	D			Inv	6/10/2007
Veronica	Escobar	Commissioner	El Paso Co., TX	TX	Corruption investigation	D			Inv	6/11/2007
James	Fantroy	Council member	Dallas, TX	TX	Public corruption	D			Inv on-going	6/6/2005
Elizabeth 'Betti'	Flores	Fmr Commissioner	El Paso Co., TX	TX	Fraud and bribery investigation	D			Inv PG (8/12/2007)	6/10/2007
Victor	Flores	Assessor-Collector	El Paso Co., TX	TX	County vehicle registrations	D			Inv No Charge	4/3/2004
Robert "Tinker"	Garza	Former chair, Trustee	Alamo CC, SA,	TX	Accepting bribes	D			Inv (filed as state case)	10/24/2004
Jesse	Gonzales	Elected Trustee	Alamo CC, SA,	TX	Accepting bribes	D			Inv (filed as state case)	10/24/2002
George	Hernandez	Donna ISD Schll Bd Mbr	Hildago Co., TX	TX	Extortion scheme	D			Inv Indt (6/5/2007)	6/6/2007
Don	Hill	Councilman; Mayoral Cand	Dallas, TX	TX	Corruption investigation	D			Inv on-going (4/25/2007)	6/6/2005
Terri	Hodge	State Legislator	Dallas, TX	TX	Public corruption	D			Inv on-going	8/30/2005
Jose	Jimenez	Fmr Commissioner	Willacy Co., TX	TX	Accepting bribes for prison contract	D			Inv Information PG (Died; dismissed)	1/15/2005
Eddie	Lucio, Jr.	State Senator	Brownsville, TX	TX	Prison contract associations	D			Inv	10/19/2006
Enrique 'Kike'	Martin	Councilman	San Antonio, TX	TX	Accepting bribes	D			Inv Indt PG (13-m 3/30/05) (filed loc too)	10/24/2002
Manuel 'Meme'	Martinez	Justice of the Peace	Zapata Co., TX	TX	Extortion; protecting drug trafficker	D			Inv Indt PG (7/7/2007)	6/13/2007
Donald	McClure	Elected Trustee	Alamo CC, SA,	TX	Accepting bribes	D			Inv (filed as state case)	10/24/2004
Sal	Mena	School Board Member	El Paso, TX	TX	Corruption investigation	D			Inv	8/30/2007
Dan	Morales	State AG; TX Gov Cand	TX	TX	Mail fraud;Campaign fund use	D			Inv Indt PG	11/18/2003
Raul 'Ron'	Navarro	PSJA School Bd Member	Hildago Co., TX	TX	Extortion scheme	D			Inv Indt (2/22/2007)	3/21/2007
Freddy Earl	Peters	Elected Constable	Jasper Co., TX	TX	Methamphetamine charges			Unk	Inv Indt (7/19/06) PG (1/25/07) (5-mos)	7/5/2006
Raul	Prado	Fmr Council; St. Rep Cand	San Antonio, TX	TX	Accepting bribes	D			Inv (filed locally)	10/24/2002
Richard James	Roach	District Attorney	Gray Co., TX	TX	Methamphetamine; gun charges		R		Inv Indt (2/15/2005) PG (5-yrs 3/2/2005)	1/11/2005
Charles	Roarke	School Board Member	El Paso, TX	TX	Corruption investigation	D			Inv	6/10/2007
Rogelio	Rodriguez	PSJA School Bd Member	Hildago Co., TX	TX	Extortion scheme	D			Inv Indt (2/22/2007)	3/21/2007
Gilbert	Sanchez	County Clerk	El Paso Co., TX	TX	Corruption investigation	D			Inv	6/10/2007
John	Sanders	Councilman	San Antonio, TX	TX	Accepting bribes	D			Inv Indt PG (15-mos 3/30/05)	10/24/2002
GuadalupeJaime	Santa Maria	PSJA School Bd Member	Hidalgo Co., TX	TX	Extortion scheme	D			Inv Indt PG (1/4/2006)	7/10/2005

Luis	Sarinanan	Commissioner	El Paso Co., TX	TX	Corruption investigation	D		Inv	5/15/2007
Israel	Tamez	Fmr Commissioner	Willacy Co., TX	TX	Accepting bribes for prison contract	D		Inv Information PG (6-mos 11/9/2006)	1/15/2005
Miguel	Teran	Commissioner	El Paso Co., TX	TX	Corruption investigation	D		Inv	5/15/2007
Maxine	Thorton-Reese	Council member	Dallas, TX	TX	Public corruption	D		Inv on-going	8/16/2005
Joe	Wardy	Fmr Mayor	El Paso, TX	TX	Corruption investigation		NP	Inv	5/15/2007
Royce	West	State Senator	Dallas, TX	TX	Public corruption	D		Inv on-going	9/30/2005
Fenton L.	Bland	House Delegate	Petersburg, VA	VA	Bank Fraud Conspiracy	D		Inv Indt PG	4/29/2005
Stuart R.	Blankenship	Bd of Supervrs Chairman	Buchanan Co.,	VA	Accepting bribes of cash/coon dogs	D		Inv Indt PG	6/24/2004
Harold 'Frank'	Cassell	Sheriff	Henry Co., VA	VA	Confiscated narcotics selling, lying	D		Inv Indt PG (5/26/07) (8-mos. 9/12/07)	11/3/2005
Sa'ad	El-Amin	Councilman	Richmond, VA	VA	Fraud; Tax fraud	D		Inv Indt PG	7/27/2003
Gwen C.	Hedgepeth	Councilwoman	Richmond, VA	VA	Bribery	D		Inv Indt Conv	10/9/2003
David Shawn	Hicks	Jailer	Buchanan Co.	VA	Obstruction of Justice	D		Inv Indt Acquitted	1/20/2006
Carl B.	Hutcherson, Jr.	Mayor	Lynchburg, VA	VA	Stealing from church's treasury	D		Inv Indt Conv (Probn 8/31/2006)	12/8/2005
Daniel Wade	Presgraves	Sheriff	Page Co., VA	VA	Open investigation		R	Inv	5/17/2007
James R. 'Pete'	Stiltner, Jr.	Bd of Supervisors Chair	Buchanan Co.	VA	Accepting bribes; perjury	D		Inv Indt Conv	6/24/2004
Bruce E.	Tulloch	Supervisor, Vice-chair	Loudoun Co.	VA	Invest. Potential public corruption		R	Inv	7/1/2007
Calvin Leo	Ward	Supervisor	Buchanan Co.	VA	Accepting bribes	D		Inv Indt Conv	6/24/2004
Carlton	Dowe	Island Senator	U.S.Virgin Islands	VI	Theft of government funds		I	Inv Indt Acquitted (10/5/2005 but had lost)	8/13/2004
Jim	Compton	Council House	Seattle, WA	WA	Campaign donationinvest.		I	Inv Dp (became local ethics invest)	8/13/2003
Christine	Gregoire	Fmr AG; Governor elect	WA	WA	Invest. Election fraud	D		Inv	3/13/2007
Jim	McDermott	U.S. Congressman	WA	WA	Campaign tactics	D		Inv	4/21/2005
Judy	Nicastro	Council House	Seattle, WA	WA	Campaign donation invest.		G	Inv Dp (became local ethics investigation)	8/13/2003
Dale R.	Perry	Fmr Mayor	Airway Heights	WA	Corruptly solicited loans		NP	Inv Indt	9/19/2006
Travis J.	Sneed	State Rep. Candidate	Spokane, WA	WA	Wire fraud		R	Inv Indt	7/23/2004
Jim	West	Fmr. Mayor	Spokane, WA	WA	Invest. Jobs/interns for gay sex		R	Inv Clsed (No charges 2/16/2006) (Died)	5/4/2005
Heidi	Wills	Council House	Seattle, WA	WA	Campaign donation invest.	D		Inv Dp (became local ethics invest)	8/13/2003
F. Thomas	Ament	County Supervisor	Milwaukee Co.	WI	Pension fund corruption	D		Inv	5/4/2002
Jim	Baumgart	State Senate Cand., 2002	Sheboygan, Wi	WI	Chvala campaign financing	D		Inv	1/7/2002
Brian	Burke	Fmr State Senator	Milwaukee, WI	WI	Campaign financing	D		Inv (Indt at state level)	7/4/2003
Rosa	Cameron	Alderwoman	Milwaukee, WI	WI	Misuse of fed block grant money	D		Inv Indt PG (2-yrs)	10/8/2002
Chuck	Chvala	State Sen. Majority Leader	Madison, WI	WI	Campaign financing	D		Inv	8/7/2002
Lynne	DeBruin	County Supervisor	Milwaukee Co.	WI	Pension fund corruption	D		Inv (USAO letter said not targets 5/4/02)	5/4/2002
Bob	Donovan	Alderman	Milwaukee, WI	WI	Extortion investigation	D		Inv Dismissed (Fined at state level)	1/8/2003
Jim	Doyle	Fmr WI AG; Governor	WI	WI	Invest. use of campaign fund	D		Inv	6/12/2002
Jim	Doyle	Governor	WI	WI	Campgn contribution and contracts	D		Inv	1/21/2006
Steven	Foti	State Representative	Oconomowoc,	WI	Employee polit work on state time		R	Inv (Indt at state level)	10/13/2003
Gary	George	Former State Senator	Milwaukee, WI	WI	Bid Rigging	D		Inv Indt PG	11/1/2003
Fred	Gordon	Fmr Alderman	Milwaukee, WI	WI	Public corruption	D		Inv (no indictment)	1/14/2003
Paul	Henningsen	Fmr Alderman	Milwaukee, WI	WI	Extortion; campaign embezzlement	D		Inv Indt (Acqited extor) Conv misuse '03	1/9/2003

Willie	Hines	Alderman, Council Pres.	Milwaukee, WI	WI	Extortion investigation	D		Inv	1/14/2003
Scott	Jensen	State Representative	Waukesha Co.	WI	Employee polit work on state time		R	Inv (Indt at state level)	10/13/2003
Marlene	Johnson-Odom	Alderman	Milwaukee, WI	WI	Bribery investigation	D		Inv	4/16/2004
Robert	Krug	County Supervisor	Milwaukee Co.	WI	Pension fund corruption	D		Inv (USAO letter not target 5/4/2002)	5/4/2002
Julie	Lassa	State Representative	Plover, WI	WI	Illicit campaign activity	D		Inv (Dp at state level)	10/13/2003
Michael	McGee, Jr.	Alderman	Milwaukee, WI	WI	Soliciting bribes for licensing	D		Inv Indt (7/10/2007, also state charges)	5/29/2007
Rod	Moen	State Senate Cand., 2002	Whitehall, WI	WI	Chvala campaign financing	D		Inv	11/7/2002
Michael	Murphy	Alderman	Milwaukee, WI	WI	Bribery investigation	D		Inv	4/16/2004
John	Norquist	Mayor	Milwaukee, WI	WI	Public corruption	D		Inv	6/21/2003
Karen	Ordinans	Fmer Chair, Supervis	Milwaukee Co.	WI	Pension fund corruption	D		Inv	10/27/2002
Joseph S.	Paulus	District Attorney	Winnebago Co.	WI	Accepting bribes to rig cases		R	Inv Indt PG (4/26/2004) (58-mos prison)	4/13/2004
Ryan	Paulus	U.S. Congressman	Wisconsin	WI	JHT trucking bill investigtion		R	Inv	3/18/2007
Jeff	Pawlinski	Alderman	Milwaukee, WI	WI	Extortion	D		Inv Indt PG (2-yrs)	3/12/2003
Kim	Plache	State Senate Cand., 2002	Racine, WI	WI	Chvala campaign financing	D		Inv	11/7/2002
Marvin	Pratt	Ald Pres., Mayor Can	Milwaukee, WI	WI	Public corruption	D		Inv (no indictment)	1/14/2003
Angel	Sanchez	Fmr Alderman	Milwaukee, WI	WI	Public corruption	D		Inv (no indictment)	1/14/2003
Scott	Walker	County Executive	Milwaukee Co.	WI	Public corruption		R	Inv Dp	3/27/2007
Glen Dale	Adkins	County Clerk	Logan Co., WV	WV	Vote buying investigation	D		Inv Indt PG	12/3/2005
Oshel	Craigo	Fmr State Senator	Putnam Co., WV	WV	Campaign investigation	D		Inv Dp	8/4/2005
Thomas	Esposito	Fmr mayor,FBI's Legis.Cand. Sting	Logan Co., WV	WV	Vote buying investigation	D		Inv Indt PG (not reporting Wells extortion 2-yrs probation 1/10/2006)	12/3/2005
Lidella Wilson	Hrutkay	Delegate	WV House	WV	Vote buying investigation	D		Inv (Indt & Conv her spouse, Mark Hrutkay)	12/4/2005
Johnny	Mendez	Sheriff	Logan Co., WV	WV	Vote buying investigation	D		Inv Indt PG (1-yr HD, 5-yrs probation	12/4/2005
Jerry L.	Mezzatesta	House of Delegates	Romney, WV	WV	Grant funds for votes	D		Inv Indt (Acquitted)	9/19/2006
Alan	Mollohan	U.S. Congressman	WV	WV	Improper campaign disclos.	D		Inv	4/7/2006
Alan	Mollohan	U.S. Congressman	WV	WV	Financial dealings investigation	D		Inv	3/29/2007
Mark Anthony	Reynolds	State Senate Candidate	Fairmont, WV	WV	Fix a federal prosecution scheme		R	Inv Indt (4/21/04) Conv (8/15/04 10-yrs 1/6/05)	3/25/2004
Gregory	Stowers	Fmr Sheriff, Circuit Clerk	Lincoln Co., WV	WV	Vote buying investigation	D		Inv Indt PG (1/5/2006)	12/30/2005
Jerry Dale	Weaver	Assessor	Lincoln Co., WV	WV	Vote buying	D		Inv Indt PG (1/5/2006)	12/7/2004
Danny	Wells	Magistrate	Logan Co., WV	WV	Attempted extortion; racketeering	D		Inv Indt Conv	5/3/2003

APPENDIX B: The Control Group; An Availability Sample of State, County, or City Public Corruption Investigations of Elected Officials as Conducted by the local grand juries of City, District, County Attorneys/Prosecutors and State Attorneys General (all non-federal law enforcemtne)

Note: Every effort has been taken to ensure the accuracy of this data as transcribed from published media news reports tracked on-line across the years. Undoubtedly, some transcription inaccuracies may be present. The author will be happy to correct his master list once alerted to potential inaccuracies.

First Name	Last Name	Party Affiliation	Elected Office	Location	Purpose of Investigation	Approximate Story Date
Nancy	Worley	D	Fmr Secretary of State	Alabama	Soliciting EmployeeCp contributions	3/15/2007
Troy	King	R	Attorney General	AL	Investigating use of PAC money	3/20/2007
Freeman	Jockisch	R	County Commissioner	Mobile, AL	Used Campaign fund personally	2/28/2004
Dan	King	R	Circuit Judge	Bessemer Co., AL	Misuse of campaign funds	4/3/2007
Larry	Means	D	State Representative	Attala, AL	Investigating use of PAC money	3/20/2007
Ronald	West	R	Mayor	Crossville, DeKalb Co., AL	Juvenile rape when police chief	7/14/2004
Stephen	Russo	NP	Mayor	Orange Beach, AL	Broberu	1/18/2006
Joe	McCarron	NP	Fmr. Councilman	Orange Beach, AL	bribery, conflict of interest	1/20/2006
Mike	Millican	D	State Senator	Hamilton, AL	Investigating extortion	12/22/2001
Roger	Bedford	D	State Senator	Russellville, AL	Investigating extortion	12/22/2001
Tom	Sanders	D	Elected School Superintendent	St. Clair Co., AL	Converting campaign funds for personal use	8/22/2007
David	Petersen	R	Fmr State Treasurer	Mesa, Arizona	Fraud, theft, conflict PG (resigned 11/15/06)	2/24/2006
Terry	Goddard	D	Attorney General	Maricopa Co., AZ	Investigating if impeded Peterson invest	8/27/2007
Sadie	Tso	NP	Sch Board President	Red Mesa, AZ	Fraud	6/10/2006
Judith	Badgley	R	Elected School Superintendent	Yuma, Co., AZ	Conflict of interest	4/21/2003
Kevin	Ross	R	Fmr County Assessor	Maricopa Co., AZ	Conflict of interest disclosing infor.	6/11/2004
Doug	Martin	R	State Mine Inspector	Queen Creek, AZ	lease/purchase agreements	12/15/2006
Sandra	Dowling	R	Elected School Superintendent	Maricopa Co., AZ	Misuse of public money	12/5/2005
Robert	Canchola	D	Elected School Superintendent	Santa Cruz Co., AZ	Misuse of public money conflict	11/25/2005
Brian	Hounshell	D	Sheriff	Apache Co., AZ	Misuse of public money, fraud	5/27/2005
David Burnell	Smith	R	State Representative	AZ	Overspent campaing funds	1/22/2006
Thomas R.	Eggleston	NP	Councilman	Glendale, AZ	Falsifying financial disclosure docs	11/17/2004
Steven A.	Frate	NP	Councilman	Glendale, AZ	Falsifying financial disclosure docs	11/17/2004
Manny	Martinez	NP	Councilman	Glendale, AZ	Falsifying financial disclosure docs	11/17/2004
David	Goulet	NP	Councilman	Glendale, AZ	Falsifying financial disclosure docs	11/17/2004
Brian	Bilbray	R	U.S. Congressman	San Diego, California	Investigating residency	10/26/2006
Frances	Busby	D	U.S. Congress Cand.	San Diego, CA	Alleged use of illegal aliens	10/26/2006
Ken	Calvert	R	U.S. Congressman	Riverside, CA	Illegal public land purchase	7/3/2007
Kevin	Shelley	D	Secretary of State	CA	Campaign contributions	2/6/2005
Ramon	Hernandez	D	Councilman	Colton, CA	Misuse of credit card and cell phone	8/24/2006
Omar	Bradley	D	Fmr Mayor	Compton, CA	Misused credit cards, travel funds	2/10/2003
Amen	Rahh	D	Councilman	Compton, CA	Misused credit cards, travel funds	2/10/2003
Delores	Zurita	D	Councilman	Compton, CA	Misused credit cards, travel funds	2/10/2003
Yvonne	Arceneaux	D	Councilman	Compton, CA	Misused of credit cards, travel funds	2/10/2003

Adrian	Jimenez		NP	Councilman elect	Hughson City, CA	Embezzlement, forgery payroll checks	12/27/2006
Jeff	Neves	R		Sheriff-Coroner	El Dorado Co., CA	Sheriffs department	8/4/2003
Steve	Castaneda	R		Fmr Mayoral cand; Councilman	Chula Vista, CA	Lying to grand jury; real estate dealings	7/6/2007
Dick	Murphy	R		Mayor	San Diego, CA	Pension fund corruption	4/25/2005
Ed	Jew	R		Supervisor, District 4	San Francisco Co., CA	Residency; contributions	5/20/2007
James K.	Hahn	D		Mayor	Los Angeles, CA	Invest. Fund-raising practices	3/4/2004
Jerry	Eaves	D		County Supervisor	San BernardinoCo., CA	Not properly reporting gifts	5/13/2003
Bill	Postmus	R		Fmr Co. Sup; Assessor	San BernardinoCo., CA	Charter school funds use investigation	9/4/2007
Eric	Swanson	R		Sch Board President	Hesperia City, CA	Charter school funds use investigation	9/4/2007
Tad	Honeycutt	R		Councilman	Hesperia City, CA	Charter school funds use investigation	9/4/2007
JoAnn	Almond	R		Councilwoman	Victorville City, CA	Charter school funds use investigation	9/4/2007
Ron	Gonzales	D		Mayor	San Jose, CA	Attempted Bribery	6/22/2006
Kathy Wilcox	Barnes		NP	City Clerk	Nevada City, CA	Negligence in office	4/26/2006
Mark	Paschall	R		Treasurer	Jefferson Co., Colorado	Soliciting kickback from bonuses given	1/29/2007
Carol	Chambers	R		District Attorney	Arapahoe Co., CO	Using office for political acquaintance	10/23/2006
Carol	Chambers	R		District Attorney	Arapahoe Co., CO	Email 'veiled threat' to judges	5/1/2007
Jim	Cosgrove	R		County Commissioner	Jefferson Co., Colorado	Use of taxpayer money to investigate litigants	2/25/2007
Rob	Hernandez	D		Fmr State Senator	Denver, CO	Investigating involvement in home's burglary	2/22/2007
M. Jodi	Rell	R		Governor	Connecticut	Fundraising from state office	1/23/2006
Louis	DeLuca	R		State Senator	Woodbury, CT	Mob threat to gdaughter's beau	6/18/2007
Dannel P.	Malloy	D		Mayor; Gov. Candidate	Stamford, CT	Contracts and campaign contributions	12/3/2004
Miriam	Alonso	R		Commissioner	Miami-Dade Co., Florida	Stealing campaign funds	8/9/2002
Ken	Jenne	D		Fmr State Senator; Sheriff	Broward Co., FL	Private consulting fees and vendors	3/10/2005
Fitzroy	Salesman	D		City Commissioner	Miramar, Broward Co., FL	Fleeing police, DUI (Jury found NG)	5/11/2005
Dalton	Upchurch	D		Sheriff	Gulf Co., FL	Falsifying DUI arrestee records	7/11/2007
Buddy	Dyer	D		Fmr State Senator; Mayor	Orlando, FL	Paid for absentee ballot collection	3/12/2005
Alan	Apte	D		Orange Co. Circuit Judge	Orlando, FL	Paid for absentee ballot collection	3/12/2005
W.D.	Childers	R		Fmr State Senator; Commissioner	Escambia Co., FL	Campaign funds, bribery	5/21/2002
Willie J.	Junior	D		Commissioner	Escambia Co., FL	Racketeering; Bribery	5/2/2002
Mike	Bass	R		Commissioner	Escambia Co., FL	Racketeering; Bribery	5/2/2002
Terry	Smith	R		Commissioner	Escambia Co., FL	Investigating bribery	7/21/2002
Mandy	Dawson	D		State Senator	FL	Prescription drug fraud	11/14/2002
Gary	Siplin	D		State Senator	FL	State employees for campaign work	4/10/2006
Jim	Exline	D		Commissioner	Palm Beach, FL	Land annexation vote	9/15/2006
Art	Teele	R		Commissioner	Miami City, FL	Wide-ranging corruption investigation	7/28/2005
Keith	Wasserstrom	D		Commissioner	Broward Co., FL	Public corruption	11/12/2006
Robert W.	Allen	R		State Representative	Merritt Island, FL	Offering oral sex to male undercover cop	7/12/2007
Tim	Handcock	R		Commissioner Candidate	Collier Co., FL	Illegal campaign contributions	4/7/2002
Mary	Brandenburg	D		State Representative	West Palm Beach, FL	Pay to play investigation	4/22/2007
Lois	Frankel	D		Mayor; Fmr Gov. Candidate	West Palm Beach, FL	Pay to play investigation	2/2/2007

Angelo	Cappelli		R	Fmr State Representative Cand	St. Petersburg, FL	Embezzled trust account	8/15/2007
Donnie L. "Van'	Streat	D		State Senator	Nicholls, GA	Campaign contributions (Dismissed)	1/8/2002
Dalton	Tanonaka		DtoR	Fmr Lt gov. Cand;US Cong Cand	Hiwaii	Campaign expenses investigation	12/10/2004
Jon	Yoshimura	D		City Council; State Senate cand	HI	Campaign fund violation invest.	11/18/2002
Cal	Kawamoto	D		State Senator	Waipahu, HI	Campaign fund violation invest.	2/6/2004
Rene	Mansho	D		City Council	Honolulu, HI	Misusing campaign funds	3/1/2002
J. Kalani	English	D		State Senator	HI	Campaign fund violation invest.	10/6/2005
Melodie	Aduja	D		State Senator	Kahuku, Oahu, HI	Campaign spending invest.	9/9/2004
Brian	Blundell		R	State Representative	West Maui-North Kihei, HI	Groping undercover police outside restroom	7/15/2004
Jeremy	Harris	D		Mayor	Honolulu, HI	Illegal political contributions	11/20/2002
Marshall	Ige	D		Fmr state Senator	Windward, Oahu, HI	Theft, Failure to file tax returns	1/9/2002
Larry	Craig		R	U.S. Senator	Idaho	Disorderly conduct in airport restroom	6/11/2007
Jack	Noble		R	State Senator	Kuna, ID	Conflict of interest	1/22/2006
Marcus	Wong		R	Clerk	Knox Co., Illinois	Forgery, Theft of another's campaign	3/19/2003
Randall	Artis	D		Fmr Councilman	East Chicago, IL	Election investigation	3/31/2006
Ponciano	Herrera	D		Committeeman	County, IL	Election investigation	3/31/2006
Bob	Lane		R	Councilman	Edwardsville, Kansas	Bribery and witness intimidation ticket fixes	7/19/2007
Ernie	Fletcher		R	Governor	Kentucky	Disregarding merit system	5/11/2006
Carroll	Smith		R	Judge Executive	Letcher Co., KY	Use of state grants in county	10/19/2006
Charles	Wallace	D		Judge Executive	Carter Co., KY	Election mailing investigation	10/19/2006
Tim	Conley		R	Judge Executive	Morgan Co., KY	Wide-ranging investigation	10/19/2006
Bob Odom	Odom	D		State Forestry Comm.	Baton Rouge, Louisiana	Bribery	8/23/2002
Pat	LeBlanc		R	State Representative Candidate	Dist. 43, LA	Bexar Texas jail investigation	8/29/2007
Barney Dewey	Ratcliff		R	Former Presicient	Livingston Parish, LA	Mail fraud state campaign reports	11/3/2004
Fred S.	Simmons		NP	Mayor	Aberdeen, Maryland	Wide-ranging corruption investigation	6/9/2007
Ruth E.	Elliott	D		Councilwoman	Aberdeen, MD	Wide-ranging corruption investigation	6/9/2007
Mike	Hiob	D		Councilman	Aberdeen, MD	Wide-ranging corruption investigation	6/9/2007
Ronald	Kupferman		NP	Councilman	Aberdeen, MD	Wide-ranging corruption investigation	6/9/2007
Richard	Slutzky		R	Councilman	Aberdeen, MD	Wide-ranging corruption investigation	6/9/2007
David A.	Yensan		NP	Councilman	Aberdeen, MD	Wide-ranging corruption investigation	6/9/2007
Fred	MacKinnon	D		Prosecuting Attorney	Ogemaw Co., Michigan	property theft	10/10/2004
Robert A.	Ficano	D		Sheriff; Cand. Co. Exec	Wayne Co., MI	Investigating campaign spending	8/17/2003
Geoffrey	Fieger	D		Attorney General Candidate	Southfield, MI	Investigating anonymous donations	12/2/2005
John	Knight		R	Supervisor candidate	Hennepin Co., Minnesota	False statements in cp phone calls	2/1/2003
Walter "Wes"	Teel	D		Chancery judge	Gulfport, Missipoi	Fraud; friendly with trial lawyers	6/8/2006
Donald	Barnes	D		Presiding Commissioner	Reynolds Co., Missouri	Soliciting a prostitute while beaten/stabbed	7/20/2007
Lorelee	Byrd		R	State Treasurer	Nebraska	Financial irregularities in office	12/1/2003
Kathy	Augustine		R	State Comptroller	Nevada	Staff for campaign work	11/11/2004
Marcus	Conklin	D		State Assembly	Carson City NV	Voter fraud	4/6/2003
John	O'Connor		R	State Legislature Cand	Fallon, NV	Selling marijauna	8/5/2004

Lynette	Boggs		R	Fmr Commissioner	Clark Co., NV	Filing false documents, perjury	8/29/2007
Ralph	Garcia		NP	Sch Bd member	West Las Vegas, New Mexico	Government corruption	6/22/2007
Peter C.	Harvey	D		Fmr Attorney General	New Jersey	Campaign contributions and gifts	2/10/2004
Anthony	Impreveduto	D		State Assemblyman	Hudson Co., NJ	Public corruption	10/19/2004
Ronald	Corn		R	Mayor	Hainesport, BurlingtonCo NJ	Embezzelment	1/12/2004
John 'Mack'	Lake		R	Mayor	Carneys Point, NJ	Public corruption	11/21/2006
William	Kruczak	D		Councilman	Edison, NJ	Avoiding DUI arrest	12/7/2004
Martha	Bark		R	State Senator	R-8, Burlington Co., NJ	Public corruption	12/20/2006
Jeffery	Romano	D		Councilman	Tennafly, Essex Co., NJ	Heroin possession	2/5/2006
John J.	Merla		R	Mayor	Keyport, CT	Corruption	2/25/2005
Robert	Hyer		R	Councilman	Keyport, CT	Corruption	2/25/2005
Rudy	Garcia	D		Fmr Mayor	Union City, Monmouth Co., NJ	Sports betting	3/28/2007
Evelyn	Williams	D		Assemblywoman; Candidate	Newark, NJ	Shoplifting	12/22/2005
Sharpe	James	D		Fmr Mayor	Newark, NJ	Public corruption	6/13/2004
Craig	Callaway	D		Fmr City council President	Atlantic City, NJ	Blackmail via tape of sexual encounter	8/29/2007
John	Schultz	D		Fmr City councilman	Atlantic City, NJ	Blackmail via tape of sexual encounter	8/29/2007
Marty L.	Small	D		City councilman	Atlantic City, NJ	Tampering with absentee ballots	11/10/2005
Vincent 'Smiley	Gallegos	D		Fmr Legislator	Clovis, NM	Housing authority management	11/22/2006
Ben	Lujan	D		Speaker of the House	Santa Fe, NM	Housing authority management	11/22/2006
Theresa	Gomez		NP	Metropolitan Judge	Bernalillo Co., NM	Housing authority management	11/22/2006
Charles	Schumer	D		U.S.Senator	NY	Campaign use of state funds	6/30/2004
Alan G.	Hevesi	D		State Comptroller	NewYork	Employees chauffered spouse	12/22/2006
Gerald P.	Garson	D		Fmr Supreme Court Justice	Brooklyn, NY	Accepting bribes in divorce cases	8/8/2003
Joseph L.	Bruno		R	Senate Majority Leader	Saratoga Springs, NY	Use of state plane for politics	7/23/2007
Eliot	Spitzer	D		Governor	New York	Using state agencies to discredit Bruno	7/23/2007
Peter	McGowan		R	Supervisor	Islip Twp, Suffolk Co., NY	Kickbacks; misuse of campgn fund	3/9/2006
Clarence	Norman, Jr.	D		Assemblyman	Brooklyn, NY	Extortion; illegal contributions	9/8/2005
Sandra	Roper	D		District Attorney Candidate	Kings Co., NY	Ethics violation	3/1/2005
Guy J.	Velella		R	State Senator	NY	Bribery	2/10/2004
Roger	Green	D		State Assembly	NY	Accepting rides	7/10/2003
Isaias	Calderon		R	Committeeman Candidate	Neptune, NY	Drug possession, robbery, assault	7/13/2004
Gloria	Davis	D		State Assembly	Bronx, NY	Taking free rides to Albany	1/5/2003
Efrain	Gonzalez	D		State Senator	Bronx Co, NY	Investigating corruption	7/15/2004
Diane	Gordon	D		Assemblywoman	Brooklyn, NY	Accepting bribes	7/11/2006
Gerald P.	Garson	D		Supreme Court Justice	Brooklyn, NY	Rec'd dinners for assignments	12/17/2004
Victor I.	Barron	D		Supreme Court Justice	Brooklyn, NY	Bribery	1/23/2002
Dennis P.	Gallagher		R	City Councilman	Queens, NY	Alleged rape and assault	8/2/2007
Wayne	Prospect	D		Former Co. Legislator Cand	Suffolk Co., NY	Investigating corruption	4/22/2004
Stephen J.	Baranello	D		Committeeman	Suffolk Co., NY	Bribery and bid-rigging investigation	4/22/2004
Fred	Towle, Jr.		R	County Legislator	Suffolk Co., NY	Taking a bribe; cp funds to gamble	5/1/2003

Leo T.	Connolly		R	Sheriff	Seneca Co., NY	Theft & retaliatory investigations	8/30/2007
Peter N.	Dibble		R	First Selectman	Stonington, NY	Sexual misconduct with minor girl	4/18/2004
Meg Scott	Phipps	D		Agriculture Comm.	NC	Campaign finance extortion	5/7/2004
Jim	Black	D		State Represenative, Hse Speaker	NC	Bribery and obstruction	7/31/2007
Rev. Coy C.	Privette		R	Commissioner; fmr state rep	Carrabus Co., NC	Aiding and abetting prostitution	7/22/2007
Thomas	Wright	D		State Legislator	North Carolina	Campaign contribution reporting	3/31/2007
Horner	Honeycutt	D		Mayor	Buncombe Co.,NC	DMV ticket fixing for contributions	2/4/2002
Bobby	Medford	D		Sheriff	Buncombe Co., NC	DMV ticket fixing for contributions	2/4/2002
Ron	Moore	D		District Attorney	Buncombe Co., NC	DMV ticket fixing for contributions	8/7/2002
Gerald	Hege		R	Sheriff	Davidson Co., NC	Embezzelment	5/15/2004
Richard	Peterson		NP	City councilman	Minnewaukan, ND	City truck purchase	8/26/2005
Mike	Every	D		State Senator' Fmr Mayor	Minnewaukan, ND	Use of city pick-up truck	11/21/2006
Bob	Taft		R	Governor	Ohio	Unreported gifts	8/18/2005
Joseph	Deters		R	Treasurer;AG cand	Ohio	Pay to play	5/6/2004
Joseph	Deters		R	State Treasurer	OH	Destroyed evidence	7/11/2004
David	Swartz		R	Commissioner	Richland Co., OH	Sexual misconduct with minor girls	2/2/2004
Steven A.	Baden		R	Fmr Mayor; Commissioner	Hamler, Henry Co., OH	Attempted abduction of minor girl	2/9/2006
Gary	DeMastry		R	Sheriff	Fairfield Co., OH	Diverting money for personal use	1/30/2001
Tom	Colburn		R	Fmr State Senator; U.S. Senator	Oklahoma	Investigating medicare fraud as M.D.	10/15/2004
Carroll	Fisher	D		Insur Comm; Cand US Sen	OK	Embezzlement; illegal charity	2/22/2004
Dan	Doyle		R	State Representtive	Salem, Oregon	Falsifying campaign repts	9/9/2005
Victoria	Doyle		R	County Clerk Cand.	Marion Co., OR	Falsifying campaign repts	9/9/2005
Rodd	Clark		NP	Sheriff	Crook Co., Oregon	Threatening to fire deputy if a candidate	5/11/2007
Mark	Metcalf		NP	Sheriff	Curry Co., OR	Sexual harrassment misconduct	3/15/2006
Karen	Lipsack	D		Councilwoman	Bristol Twn., Bucks Co., PA	Corruption investigation	4/13/2007
Milton T.	Street	D		Fmr State Senator; Mayoral Cand.	Morristown, PA	Outstanding traffic warrants	3/22/2007
Fred C.	Moran		NP	Supervisor	Haverford Twp Delaware, Co. PA	Request of donation to Township	4/6/2007
Samuel J.	Fenton	D		Mayor	Bristol Twn., Bucks Co., PA	Corruption investigation	4/12/2007
Mark	Pazuhanich		R	Family Court Judge	East Stroudsburg, PA	Fondling a minor relative	7/13/2004
Jeff	Habay		R	State Representtive	Pittsburgh, PA	Staff for campaign work	10/26/2004
Mary Grace	Boyle	D		Retired District Judge	Allegheny Co, PA	Use of state workers in campaign	3/1/2006
Carol Ann	Campbell	D		Councilwoman	Philadelphia, PA	Campaign finance violations	4/13/2007
Donald 'Don'	Lorady	D		Councilman	Bristol Twn., Bucks Co., PA	Corruption investigation	9/1/2006
Jeff	Habay		R	State Representative	Shaler, PA	Used state employees for politics	12/22/2005
Robert	Regola		R	State Senator	Hempfield, PA	Perjury, reckless endangerment of minor	3/27/2007
Kevin	Gilroy	D		Councilman	Bristol Twp, Burks Co PA	Stealing from local political committee	9/15/2005
John	Weinstein	D		Treasurer	Allegheny Co, PA	Absentee ballot fraud	12/15/2004
Aníbal	Acevedo Vilá	D		Governor	Puerto Rico	Campaign gift (no finding)	1/15/2005
Edison Misla	Aldarondo		NNP	House Minority leader	Puerto Rico	Attempted rape of minor step-daughter	11/17/2004
A. Ralph	Mollis	D		Fmr Mayor; Secretary of State	North Providence, RI	Mailing to municipal employes	12/13/2006

John A.	Celona	D		State Senator	North Providence, RI	Taking bribes via employment	12/10/2003
Raymond	Gallison	D		State Representative	Bristol-Portsmouth, RI	Association with non-profit agency	12/22/2006
Charles	Sharpe		R	Elected Agri. Comm.	SC	Accepting bribes	7/29/2004
Thad	Viers		R	State Representative	Horry, SC	Threatening ex-wife's boyfriend	10/15/2006
Buddy	Meetze		R	Councilman	Richland Co., SC	Campaign violations	9/24/2002
Ted A.	Klaudt		R	Fmr State Representative	Corson Co., SD	Sexual contact w foster care minor girls	5/19/2007
Dan	Sutton	D		State Senator	Flandreau, SD	Fondling a male page	1/24/2007
Shep	Wilbun	D		Fmr Co. Comm; Juv court Clerk	Memphis, TN	Public corruption	11/16/2005
Scott	Manning		R	Sheriff	Anderson Co., TN	Misuse of public funds	5/8/2001
William P.	Livingston		R	Fmr Sheriff	Grainger Co., TN	Selling methadone wafers to undercover	10/14/2005
David	Ray		NP	Sheriff	Claiborne Co., TN	Inappropriate sexual contact w girl	12/1/2006
Mark	Tate		R	State Senate candidate	Loudoun Co., VA	Perjury and election fraud	5/21/2007
Tom	DeLay		R	U.S. Congress	Travis Co., TX	Money laundering and conspiracy	9/28/2004
Travis	Frost	D		U.S. Congressman	Travis Co., TX	Corporate donations to TX cands.	6/6/2004
Tom	Craddick		R	Fmr Speaker of the House	Travis Co., TX	Campaign corruption	3/17/2003
Pete	Laney	D		Fmr Speaker of the House	Travis Co., TX	Campaign corruption	3/17/2003
Ralph	Lopez	D		Sheriff	Bexar Co., TX	Jail contracts investigation	8/29/2007
Pat	Leblanc		R	State Representative Candidate	Bexar Co., TX	Jail contracts investigation	8/29/2007
Larry Dale	Floyd		R	Constable	Denton Co., TX	Soliciting sex w minor;child porn	7/29/2005
Jim	Bowles		R	Sheriff	Dallas Co., TX	Investigating jail contract award	12/5/2003
Weldon	Lucas		R	Sheriff	Denton Co., TX	Barn for jail contract	3/29/2004
Amado	Abascal III	D		District 365 Judge	Maverick Co., TX	Campaign contributions	10/10/2005
Raul	Prado	D		Council; St. Rep. Cand	San Antonio, TX	Accepting tickets and reselling	10/24/2002
Enrique 'KiKi'	Martin	D		Councilman	San Antonio, TX	Accepting bribes	10/24/2002
John	Sanders	D		Councilman	San Antonio, TX	Accepting bribes	10/24/2002
Rick	Vasquez	D		Councilman	San Antonio, TX	Accepting bribes	8/1/2004
Debra Martinez	Briseno	D		Fmr Council; J of Peace Cand	Port Lavaca, Calhoun Co., TX	Encouraging illegal voting in March 2006	6/22/2007
Conrado	Cantu	D		Sheriff	Cameron Co., TX	Corruption extortion bribery	7/10/2003
Alfred	Isassi	D		Elected County Attorney	Kleberg Co., TX	Intervened improperly in Aunt's case	7/13/2007
Donald	McClure	D		Elected Trustee	Alamo CC, SA, TX	Accepting bribes	10/24/2004
Jesse	Gonzales	D		Elected Trustee	Alamo CC, SA, TX	Accepting bribes	10/24/2002
Robert 'Tinker'	Garza	D		Former chair, Trustee	Alamo CC, SA, TX	Accepting bribes	10/24/2004
Danny	Messer		R	Tax Assessor-Collector	Potter Co., TX	Financial irregularities in office	5/30/2001
Judy	Messer		R	Treasurer	Potter Co., TX	Financial irregularities in office	5/30/2001
Joe	Kirkwood		R	Commissioner	Potter Co., TX	County work on private property	12/12/2006
Oscar	Garza, Jr.	D		Commissioner	Hidalgo Co., TX	Investigating land leases	7/8/2003
Nancy	Workman		R	County Mayor	Salt Lake County, UT	Unofficial use of county funds	9/10/2004
Craig	Sorensen		R	County Auditor	Salt Lake County, UT	Unofficial use of credit card	5/28/2004
Jon	Moseley		R	Commonwealth Attorney Candidate	Loudoun Co., VA	Voter fraud	10/21/2003

Mark	Tate		R		State Senate candidate	Loudoun Co., VA	Election fraud; perjury	12/12/2006
Judy	Nicastro			G	Council House	Seattle, WA	Campaign donation ethics violation	8/13/2003
Heidi	Wills	D			Council House	Seattle, WA	Campaign donation ethics violation	8/13/2003
Jim	Compton			I	Council House	Seattle, WA	Campaign donation ethics violation	8/13/2003
William Tom	Toler	D			Magistrate Judge	Wayne, Co., WV	Sexual abuse, bribery, exposure	7/7/2004
Jerry	Mezzatesta	D			Fmr House Delegate	Hampshire Co., WV	Lying about grant solicitation	4/21/2005
Jim	Doyle	D			Governor	Wisconsin	Improper lobbying of election board	9/23/2006
Brian	Burke	D			State Senator	Milwaukee, WI	Illicit campaign activity	11/8/2002
Julie	Lassa	D			State Senator	Plover, WI	Investigating campaign	10/14/2003
Gary	George	D			Former State Senator	Milwaukee, WI	Bid Rigging	11/1/2003
Scott	Jensen		R		State Representative	Brookfield, WI	Illicit campaign activity	10/15/2003
Steve	Foti		R		State Representative	Oconomowoc, WI	Illicit campaign activity	10/15/2003
Bonnie	Ladwig		R		State Representative	Racine, WI	Illicit campaign activity	10/3/2005
Chuck	Chvala	D			Senate Majority leader	Madison, WI	Extortion	11/8/2002
Bob	Donovan	D			Alderman	Milwaukee, WI	Improper finance disclosure	7/5/2005
Michael	McGee	D			Alderman	Milwaukee, WI	Suspected threat	6/26/2007
Annette	Zigler		R		Supreme Court Justice	Wisconsin	Conflict of interest re County cases	3/6/2007
Mark	Green		R		U.S. Congressman; Gov Cand	Wisconsin	Campaign fund transfer	9/23/2006

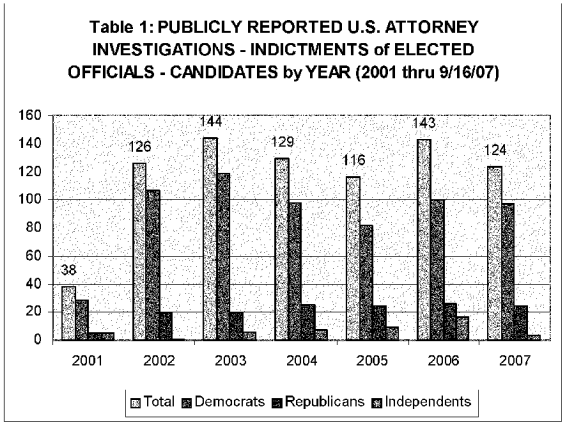


Table 2. Investigations and/or Indictments by the Bush/Ashcroft/Gonzales DOJ's U.S. Attorneys (Jan 1, 2001 thru Sept 16, 2007)

Elected Officials and Candidates	N	Democrat	Republican	Independent/Other	Ratio of Democrats to each Republican
All officials	820	631 (76.95%)	142 (17.32%)	47 (5.73%)	4.44/1
Federal & statewide officials	132	83 (62.88%)	045 (34.09%)	04 (3.03%)	1.84/1
Local (non-federal & non-statewide)	688	548 (79.65%)	097 (14.10%)	43 (6.25%)	5.65/1

Table 3. Stability of the Results over Time
(All results fall within the margin of error of 3.42% for the total sample)

Date of Interim Analysis	N	Democrats	Republicans	Independent/Other	* Error Margin +/-
8/31/2004, Baton Rouge, LA	229	189 (82.53%)	037 (16.16%)	003 (1.31%)	6.47%
1/31/2005, Boston, MA	309	236 (76.38%)	044 (14.24%)	004 (1.29%)	5.57%
12/31/2006 *ePluribus Media*	375	298 (79.47%)	067 (17.87%)	010 (2.66%)	5.06%
12/31/2006 Replication	321	239 (74.45%)	050 (15.58%)	032 (9.97%)	5.47%
12/31/2006 Original plus Replication	696	534 76.72%	118 16.95%	044 (6.32%)	3.71%
New, 1/1/2007 thru 9/16/07	124	097 77.03%	024 20.27%	003 (2.70%)	8.80%
Total 1/20/2001 thru 9/16/2007	820	631 76.95%	142 17.32%	047 5.73%	3.42%

* Based on population of elected officials as 500,000 nationwide using American Research Group, Inc.'s web-based calculator, http://www.americanresearchgroup.com/moe.html .

Table 4. Non-Federal Investigations (State AGs and County/City PA/DAs)
of Elected Officials 2001 thru September 16, 2007

Total Non-Fed Investigations: 251	125 D (50.00%)	103 R (41.80%)	23 I/O (9.20%)
Fed/Statewide: 33	17 D (51.52%)	15 R (45.45%)	1 I/O (3.03%)
Local: 217	108 D (49.77 percent)	87 R (40.09 percent)	22 I/O (10.14%)
Control Group			

Observed	125	103	23
Expected	125	103	23

Table 5. Investigations and/or Indictments of County Commissioners by U.S. Attorneys (Jan 1, 2001 thru Sept 16, 2007)

Elected County Commissioners & Candidates	N	Democrat	Republican	Independent/Other	Ratio of Democrats to each Republican
Observed Frequency	71	62 (80.85%)	7 (12.77%)	2 (6.38%)	8.86/1
Expected Frequency	71	29 (41.00%)	33 (46.00%)	9 (13.00%)	.88/1

Chi-square = 32.136 at 2df

Table 6. U.S. Attorney Investigations and/or Indictments in Ashcroft versus Gonzales Years

	N	Dems	Repubs	Indep/Other	Dems/Repub
All Ashcroft's Term, 1/20/01 - 2/2/05	456	368 (80.70%)	069 (15.13%)	019 (4.17%)	5.33/1
All Gonzales' Term, 2/3/05 – 9/16/07	364	263 (72.25%)	073 (20.06%)	028 (7.69%)	3.60/1
Total 1/20/01 - 9/16/07	820	631 (76.95%)	142 (17.32%)	047 (7.79%)	4.44/1
Ashcroft Fed/Statewide	070	048 (68.57%)	019 (27.14%)	003 (4.29%)	2.53/1
Gonzales Fed/Statewide	062	035 (56.45%)	026 (41.94%)	001 (1.61%)	1.35/1
Total Fed/Statewide	132	083 (62.88%)	045 (34.09%)	004 (3.03%)	1.84/1
Ashcroft Local	386	320 (83.12%)	050 (12.73%)	016 (4.15%)	6.40/1
Gonzales Local	302	228 (75.50%)	047 (15.56%)	027 (8.94%)	4.85/1
Total Local	688	548 (79.65%)	097 (14.10%)	043 (6.25%)	5.65/1

Mr. SCOTT. Thank you, Professor.

Attorney Jones?

TESTIMONY OF G. DOUGLAS JONES, ESQUIRE, WHATLEY, DRAKE AND KALLAS, BIRMINGHAM, AL

Mr. JONES. Thank you, Mr. Chairman.

It is a privilege to be back. I testified before Chairman Scott's Committee earlier this summer on the Till bill which I still hope will pass both Houses so that we can further investigate and prosecute the unsolved crimes of the Civil Rights era.

For today, we are here on a much more disturbing topic that, I believe, has significantly damaged the credibility of the Department of Justice, and that is the role of partisan politics in recent criminal investigations. I want to echo what my colleague at the other end of the table, former Republican Attorney General Dick Thornburgh, said. Partisan politics plays no role in either the investigation, the prosecution or the timing of cases, and, unfortunately, that does not appear to be the case with the current Administration.

Mr. Chairman, I have submitted a lengthier written testimony that I know will be made part of the record. I would like to just spend a few moments to sum up the timeline of the Governor Siegelman investigation that goes back to 1999 at a time when I was still a United States attorney.

Governor Siegelman, who had been a force in Alabama politics, probably the most dominant force in state politics as a Democrat since he first took office in 1978, was elected governor in 1998 and assumed office in January 1999, and it seemed that no sooner had he taken office that certain investigators and lawyers and the attorney general's office of the State of Alabama targeted him for investigation.

Now, ultimately, those charges brought against a Siegelman supporter in 2001 did not include Governor Siegelman. In fact, he was not named as a co-conspirator, and his name was rarely mentioned even in the trial.

But it was in 2001 and 2002 that a separate investigation also started. It was being prosecuted jointly with the U.S. attorney's office out of Montgomery. The allegations involved corruption among one of Governor Siegelman's Cabinet members, Nick Bailey, and a supporter named Lanny Young.

Clearly, those two individuals had committed crimes. It was bribery that Nick Bailey testified to that Governor Siegelman had no knowledge about, but very quickly the investigation turned the crosshairs on to Governor Siegelman.

I did not represent Governor Siegelman at the time. I did not begin to represent him until 2003, following the death of his counsel, David Johnson, but one of the first things that we did in 2003 was to visit with the U.S. attorney's office and the Alabama attorney general to discuss the case, to tell them that we did not believe that politics should be involved in this case, but we were concerned about timing and that this case needed to move forward. Governor Siegelman had lost the election in 2002 and now was very obviously going to run again in 2006.

We were assured that it would not, and I believed that. I believed it then, and I believe it today, that at that point politics may not have played a role. There were allegations that needed to be looked at and, as a prosecutor, I know that you have to look at serious allegations no matter who it is.

But in 2004, all of a sudden, a case that had originated in 1999 and resulted in a conviction of Dr. Bobo and had been reversed came back and, for the first time, Governor Siegelman is included in an indictment out of the clear blue sky. It came as a complete shock to us that Don Siegelman was included in May of 2004 in that indictment as a co-conspirator with Dr. Bobo.

I detail this more in my statement, my written statement, Mr. Chairman.

The case is ultimately dismissed. I was recused in that case, but continued to work on the case out of Montgomery.

In the summer of 2004, while the case in Birmingham was pending, we met with U.S. attorneys in Montgomery. We were told at that time that they had written off most all of the charges that had been looked at for 2 years or more against Governor Siegelman, that they had narrowed their focus to three charges, including one that involved Mr. Scrushy. They wanted us to extend the statute of limitations because they had just not quite got the evidence they needed, which we did, we gladly did, because we were convinced that there was no crime and that no amount of time would result in finding evidence to support a crime. This was in July of 2004.

We did not extend the statute of limitations again, although we were asked to do that. Instead, I continued to call. We were promised in the summer of 2004 that an answer would be given to us within the month, that they would make a decision, that the case needed to move. It came and went. The month came and went. I kept calling.

What is interesting is that in October of 2004, the case in Birmingham was dismissed. Governor Siegelman's case was thrown out on a motion of the government after an adverse ruling by Judge Clemens. A month later, in November of 2004, I again had discussions with the assistant U.S. attorney in Montgomery. At that time, we were told very specifically that they had had a meeting in Washington and that Washington had told them to go back and review the case top to bottom.

What resulted in 2005 was not, Mr. Chairman, simply a review of the case. It was a wholesale renewed investigation, casting wider nets, subpoenaing more records, allegations that were off the table were back on, new allegations that came forward that ultimately resulted in charges. All of this was absolutely stunning and a complete reversal of what we had been told only a few months before.

I ultimately did not represent Governor Siegelman at trial because of a trial conflict that I had in Birmingham, but there is no question in my mind the Department of Justice in Washington were integrally involved, despite the statements made by the acting U.S. attorney in Montgomery. The case was working out of Washington. They were an integral part of the case. I think the evidence clearly demonstrates that.

Mr. Chairman, finally, as a wrap-up, let me just say that I understand that here in Washington and within the beltway, this

hearing would appear to be driven by politics, but I can assure you, as is attested to by the fact that you have both a Republican and a Democrat on this panel, that across the country, people who have worked in the Department of Justice are concerned, and they see a disturbing trend and a trend that involves partisan politics that should never be the case.

Resources have to be used appropriately and, in this case, Mr. Chairman, when partisan politics are involved, it will undermine the entire credibility of the system, taint any jury verdict that could come out and erode the confidence of the public. It is as I said in my statement.

Dr. King once said that injustice anywhere is a threat to justice everywhere, and that, I think, is happening across the country today, Mr. Chairman.

Thank you.

[The prepared statement of Mr. Jones follows:]

PREPARED STATEMENT OF G. DOUGLAS JONES

Before the Subcommittee on
Crime, Terrorism & the Homeland Security

and

the Subcommittee on Commercial & Administration Law of the
Committee on Judiciary, U.S. House of Representatives

Testimony of
G. Douglas Jones
Attorney with Whatley, Drake & Kallas, LLC, Birmingham office
and former United States Attorney for the Northern District of Alabama

"Allegations of Selective Prosecution: The Erosion of
Public Confidence in our Federal Judicial System"

October 23, 2007

Thank you Mr. Chairman.

I am Doug Jones, a partner in the Birmingham office, of the law firm of Whatley, Drake & Kallas. I am a former staff counsel for the Senate Judiciary Committee, where I worked for the late Senator Howell Heflin of Alabama. I was Assistant United States Attorney in Birmingham from 1980-1984 and from 1997-2001 I was the United States Attorney for the Northern District of Alabama. I had the honor of testifying before this Committee earlier this summer about our work in prosecuting the two former members of the Ku Klux Klan for the 1963 bombing of the 16th Street Baptist Church in Birmingham and the importance of passing the Emmett Till Bill that will provide funding to investigate and prosecute unsolved crimes of the Civil Rights Era.

I am here today, however, on a more disturbing topic that has significantly damaged the credibility of the Department of Justice- the role of partisan politics in the recent criminal investigations. It goes without saying, Mr. Chairman, that the criminal justice system should be blind to the political affiliations of the party in power or of those who may be the subject or target of criminal investigations. Unfortunately, recent revelations about the firings of certain U.S. Attorneys by the Administration, and media reports about a number of cases across the country have heightened concern that partisan politics have played a significant role in decisions of the Department of Justice, unlike at any other times in the Department's history. For those who have been in any position of responsibility at the Department, it is a disturbing trend.

I have been asked to testify today about my knowledge of the facts surrounding the investigation, indictment and conviction of former Alabama Governor Don Siegelman, a Democrat who held the officer of Governor from January of 1999 to January of 2003. Governor Siegelman had been a major political force in Alabama for over 2 decades, having lost only one

statewide primary election since his first election as Secretary of State in 1978. I had been his friend and supporter for many years, but first became his lawyer in the spring of 2003 following the untimely death of his previous attorney earlier that year.

My knowledge of a criminal investigation where Gov. Siegelman was targeted goes back to the spring of 1999 when I was the U.S. Attorney in Birmingham. It seemed that no sooner had the ink dried on his oath of office, investigators and certain lawyers with the Alabama Attorney General's office targeted Gov. Siegelman for investigation. The investigation began with allegations that a Siegelman supporter from Tuscaloosa, Dr. Phillip Bobo, had committed Medicaid fraud by attempting to rig a bid for a state contract for the delivery of health care services. When my office was contacted about jointly investigating these allegations, as we had done in other cases with the Attorney General, we assumed that it was because Tuscaloosa is in the Northern District of Alabama, rather than the Middle District of Alabama that included the state capitol of Montgomery. In a meeting with my assistants, however, it became obvious that these Assistant Attorneys General did not see this as simply a Medicaid fraud case, but one of public corruption in Montgomery that they "hoped"—their words not mine—would reach the highest level of the Siegelman administration, even though there was no evidence to suggest that at that point. They also made it clear they were coming to the Northern District because they did not trust my friend and colleague, Redding Pitt, the U.S. Attorney in the Middle District, because a decade earlier he had worked for Don Siegelman as an Assistant Attorney General. The suggestion was both insulting and unprofessional and I refused to be a party to such an end run on what clearly should be focused in Montgomery.

Attorney General Bill Pryor, a Republican who had been appointed Attorney General when Jeff Sessions was elected to the Senate, and won election in 1998, the year Don Siegelman

was elected governor, personally came to Birmingham to discuss my decision and to ask that I reconsider. Now a judge on the 11th Circuit Court of Appeals, Bill Pryor had taken office only a few months before I had and in the short time that we worked together on various matters he became a trusted colleague and friend and it was that reason and that reason alone that he thought that our two offices should work together on the Bobo investigation. He did not in any way condone what had been represented by his assistants and we both agreed that the investigation should follow the facts as they were developed, no matter where they might lead. I explained, however, that I simply could not overlook his assistants' stated purpose and therefore we declined to be involved and a joint federal-state investigation begun in the Middle District.

I would also like to say at this point that the statements made to me by Attorney General Pryor were entirely consistent with every experience I had with him. Despite the fact that he somehow seems to be touched with the broad brush of allegations of partisanship in this matter, the fact is that Bill Pryor has never advocated an investigation for any reason other than that which the law requires, the investigation of criminal activity without regard to political affiliation. He never shied away from tough public corruption cases, but I never saw him pursue any criminal matter for partisan political purposes. Had I seen any evidence of that in the years we worked together, I would have never supported his nomination to the 11th Circuit Court of Appeals as I was proud to do.

My office had no further involvement in this matter until early in 2001, over 2 years later, and after the Presidential elections. It was at that time that my colleague in the Middle District called and asked for a meeting about the Bobo matter. He explained that not only had the investigation failed to reach the highest levels of the Siegelman administration, but that there was no suggestion of public corruption at all, leaving only what appeared to be allegations of

Medicaid fraud committed in the Northern District, not in the Middle District. He therefore requested the opportunity to have his assistants and the assistants in the Attorney General's office present the case to a Northern District grand jury. I certainly was not going to turn down such a request, but told him that his personnel must handle the case from start to finish because my office had other matters pending, including the upcoming church bombing cases, and our resources were too thin to take on the Bobo matter. Dr. Bobo was indicted and convicted later that year, but his case was overturned on appeal. It is my understanding that at no time during the course of the trial was Governor Siegelman ever mentioned, much less designated, as a co-conspirator with Dr. Bobo.

I left office in June 2001 following the first of the church bombing prosecutions. It was not long thereafter, following a series of newspaper reports about a state warehouse contract involving an individual named Lanny Young, that it became widely known that Governor Siegelman was again in the cross-hairs of criminal investigators. Recent media reports have detailed interviews with Mr. Young as early as the summer and fall of 2001. The investigation was once again being conducted by the same attorneys and investigators from the Attorney General's office with new personnel from the U.S. Attorney's office in the Middle District. I followed that investigation only as it played out in the media leading up to the 2002 gubernatorial election. There was a series of what appeared to be grand leaks that prompted Governor Siegelman's attorneys to call for the recusal of the new U.S Attorney in Montgomery, whose husband was active in Republican politics. The U.S. Attorney, Ms. Canary, ultimately recused herself from the investigation.

Clearly, the investigation in Montgomery had uncovered serious criminal conduct between Mr. Young and Mr. Bailey that ultimately resulted in guilty pleas by both men to

various federal charges. It was equally clear that both men hoped to minimize their prison time by providing information that would assist investigators in bringing criminal charges against Gov. Siegelman. Allegations of improper payments toward the purchase of a motorcycle and four-wheeler ATV kept surfacing in the media.

Governor Siegelman narrowly lost the 2002 elections to his Republican opponent Bob Riley. Less that 7 or 8000 votes separated the 2 candidates and I frankly believe that the investigative leaks leading up to November cost Governor Siegelman his re-election bid.

In January 2003, Governor Siegelman's lawyer, David Cromwell Johnson, died unexpectedly. A couple of months later Governor Siegelman hired me as his lead counsel.

Aside from assembling the files from the Governor's former attorney, and beginning my investigation, the first order of business was set up a meeting with prosecutors in Montgomery. I called my friend, the Attorney General Bill Pryor, and told him that I was now representing Governor Siegelman and that my partner and I would like to come down to discuss the case, not in detail, but more as a courtesy to meet others involved and to let them know of our representation. By this time, the First Assistant in the U.S. Attorney's office, Ms. Weller, has been designated Acting U.S. Attorney. The Public Integrity Section of our Department of Justice had also assigned an attorney, John Scott, to work the case and it was requested that our meeting take place when he could be in Montgomery.

My partner, Jack Drake, and I traveled to Montgomery in the spring of 2003 and met in the Attorney General's office with Attorney General Pryor, one of his assistants, Ms. Weller and Mr. Scott. Again, this was a courtesy meeting and very little substance was discussed. I did, however, make a point of telling them that I did not believe the Governor had done anything wrong, but that as a former prosecutor I understood that some time was needed to sort through

the evidence. I also told them that it was not my intention to hit the media with allegations of politics as had been raised by the Governor's previous attorney because I had too much respect for Attorney General Bill Pryor and the Department of Justice. I did state, however, that the investigation had already gone through one election, and that it needed to be resolved as quickly as possible. I also said, however, that if the investigation continued to play out in the media through the next election, and beyond, then it would, in my opinion, raise the specter that partisan politics was at play. We were assured by everyone that politics had no role and that they would move expeditiously. I was then, and still am today, comfortable that those were true statements.

For the next year, the investigation continued. During this time we were attempting to do our own work, learn the facts and to keep up as to where we thought the investigation was headed. We had little contact with prosecutors in Montgomery during this time and my friend Bill Pryor leaves office in February following his appoint to the Court of Appeals. Then in late May, early June of 2004, I get a call from a friend who tells me that the U.S. Attorney in Birmingham, not Montgomery, is about to announce a major public corruption indictment and that he thought it was Governor Siegelman. I initially shrugged it off as erroneous because there had never been any indication whatsoever that the Governor was being investigated in Birmingham. I was wrong. We learned for the first time at the press conference that Governor Siegelman had been indicted along with his former Chief of Staff and Dr. Phillip Bobo. This news was a complete shock and I had to stop the Governor before he boarded a plane to New York to give him the news. The case against Dr. Bobo that had started in 1999 now, for the first time, included Governor Siegelman. Moreover, the former Assistant Attorney General who told

my staff that he hoped the Bobo investigation would go to the highest levels of the Siegelman administration was now the Assistant U.S. Attorney in Birmingham handling the 2004 case.

Other than an initial contact with the Government to make sure that they were not going to seek arrest and perp walk the Governor, I had nothing to do with the defense of the Birmingham case. The Government made it clear from the outset that they were going to seek to have me recused because of my involvement in allowing the case to go forward against Dr. Bobo when I was U. S. Attorney. While I disagreed with that position, the Court ultimately held that I was precluded from representing the Governor in that particular matter.

The matters in Montgomery were a different matter, and during the summer of 2004, we learned that a new team from the U.S. Attorney's office was now in place to handle the Siegelman investigation and for the first time the Government was calling us with a request to discuss the case. There was also some sense of urgency because it was believed that the statute of limitations was about to run on a matter involving Richard Scrushy and Healthsouth, an issue which was being brought up for the first time.

In early July 2004, my partner, Jack Drake, and I, along with another Siegelman attorney, Bobby Segall, met with the prosecutors to discuss the case. Included in the meeting was John Gibbs from the Attorney General's office, Louis Franklin, the Criminal Chief in the U.S. Attorney's office who was now, after Ms. Weller left the office, the Acting U.S. Attorney in the case, and Assistant U.S. Attorney Steve Feaga, an experienced white-collar prosecutor. Mr. Feaga explained that he and Mr. Franklin had been assigned to the case a few months earlier and that they had been working to get up to speed. He told us that they had "written off" the matters involving the motorcycle and the four-wheeler as just being too trivial to bring as federal charges against a former governor. He advised that they had narrowed their focus to three areas: the

appointment of Richard Scrushy to the Alabama Certificate of Need Board (the "CON Board") and the $250,000 contribution to the Lottery Foundation; a tax change by the Siegelman Revenue Department that favored a waste management company and who paid Lanny Young $500,000 to get it done; and some disbursement of tobacco litigation money that went from Governor Siegelman's former law firm to the Governor while he was in office. From our standpoint, we know enough about the latter two areas to feel comfortable that nothing improper or illegal had occurred and that witnesses would support that. Even the prosecutors expressed skepticism about these two areas. From their perspective, however, the Scrushy case was a different matter.

Mr. Feaga stated that the circumstantial evidence surrounding the contribution of $250,000 to the Lottery Foundation and Mr. Scrushy's appointment to the CON board was compelling evidence that a Hobbs Act violation, extortion under color of law, had been committed. On the other hand, he also acknowledged that the defense to such a charge, both legally and factually, was also compelling and that there were serious gaps in the evidence that appeared to preclude bringing a charge. For instance: Richard Scrushy or someone from Healthsouth had been appointed to the CON Board by the previous three governors and had a presence on the Board since 1986; that like so many business leaders, Richard Scrushy and Healthsouth made significant political contributions hoping to have access to political leaders; that even though Mr. Scrushy had contributed heavily to Governor Siegelman's opponent, who in 1998 was the incumbent Governor, Healthsouth was one of the largest health care providers in the state and country and that it was only natural for him to want to assist in an endeavor that would gain favor with the new governor, the Education Lottery initiative. The biggest hurdles for the Government, however, were the facts: the only way that they could prove a specific *quid*

pro quo as required by the Hobbs Act, was through the testimony of a former Siegelman aide, Nick Bailey, who had already admitted to taking over a $100,000 worth of bribes from Lanny Young. Mr. Bailey had told the investigators that Mr. Scrushy came to Montgomery in the summer of 1999 and had a private meeting with Governor Siegelman. He said that immediately following that meeting Governor Siegelman showed him the $250,000 check to the Lottery Foundation and indicated that in exchange Mr. Scrushy wanted a seat on the CON Board. But Mr. Bailey's statement had a fatal flaw in that it was inconsistent with the documented, objective evidence that the $250,000 check had not been issued until a week or so after the Siegelman/Scrushy meeting. Mr. Bailey's credibility was significantly damaged anyway with his admissions of crimes with Lanny Young and cutting a deal with prosecutors for a lenient sentence. This inconsistency was damning and it was clear that the prosecution knew it. They had no evidence that the Governor had even seen the check and no evidence about the check's delivery from Healthsouth to Montgomery. They knew that the check had been "Fed-Exed" to Healthsouth but no one knew how it got from there to Montgomery. No matter how compelling the circumstantial evidence appeared to be, it was clear that Government prosecutors in Montgomery were not comfortable bringing charges against a former governor where the credibility of their star witness was so damaged, the witnesses' statement was so inconsistent with known facts and there were such gaping holes in the evidence.

We also discussed the fact that this investigation needed to come to a conclusion as soon as possible. There was a concern from the prosecutors that the five year statute of limitations was about to expire with regard to the appointment of Mr. Scrushy to the CON Board, which had occurred in late July, 1999. The Government wanted more time to try and fill in the evidentiary holes in the case and asked us if Governor Siegelman would sign a tolling agreement extending

the statute of limitations for an additional 30 days. Because we were convinced from our conversations that the other matters had either been written off and/or were such that we did not believe any crime had occurred, we agreed to have the Governor sign the tolling agreement. We firmly believed that additional investigation would only help. Right or wrong, we left the meeting convinced that the investigation in Montgomery would soon be coming to a close without any charges being brought, leaving only the indictment in Birmingham to worry about.

As the 30 day period was about to expire I had telephone discussions with the Assistant U.S. Attorneys. I can't recall all of the specifics, but I know that we were asked to extend the statute of limitations for another 30 day period. I responded that Governor Siegelman would not do that, that the investigation had dragged out long enough, that the evidence was not going to get any better, that Nick Bailey's credibility was not going to get any better and that it was time, as we say down South, for the prosecution to fish or cut bait. I was told that despite earlier concerns, the lawyers in Washington did not believe there was a statute of limitations problem, but that in any event they would make a decision within the month. These conversations would have been in early to mid-August, 2004. I remained convinced that the investigation was going to come to a close.

A month came and went. I started to call the U.S. Attorney's office, but could not get any response. Two months, then three months went by with no substantive conversations with prosecutors. However, in October of 2004, a day or two after the trial started in Birmingham, the Government moved to dismiss all charges against Governor Siegelman after the Court made an adverse evidentiary ruling. Although I did not think so at the time because of my prior conversations with the prosecutors in Montgomery, the dismissal of the Birmingham case now appears to have been a turning point in the Montgomery investigation

It was just about a month later, in late November or December, 2004, that my partner and I were able to have the first substantive conversation with prosecutors about the Montgomery investigation since our meeting in Montgomery in July. It was on a phone call that Assistant U.S. Attorney Feaga first apologized for not giving us a definitive answer any earlier as he told us he would do back in the summer. "But," he said "we had a meeting in Washington and we were told to go back and look at everything again from top to bottom." My reaction to that statement was mixed. On the one hand, in a case in which they would likely be criticized regardless of the decision that was made, it would not have been unusual for the Public Integrity Section to want to make sure that all of the "i's" were dotted and all of the "t's" were crossed. On the other hand, I was concerned that having failed in Birmingham, the Government would now re-double their efforts to bring charges against Governor Siegelman in Montgomery. Unfortunately, it was that fear that thereafter came to pass.

What we saw beginning in early 2005 was much more than simply a top to bottom review. Instead it was as if the investigation had new life from top to bottom and beyond. Whereas in the past it had appeared that the investigation was being driven by investigators in the Attorney General's office, the FBI and the feds now seem to be taking control and they were casting a wider net than ever before. The charges that we were told had been "written off" were obviously now back on the table and for the first time it appeared that agents were not investigating any allegations of a crime, but were now fishing around for anything they could find against an individual. New subpoenas were being issued for documents and witnesses. Anyone that was a major financial backer of Don Siegelman or who had done business with the state during his administration began receiving visits by investigators and subpoenas by prosecutors. Every bank record, every financial record, every investment record of the

Governor, his wife, his campaign and his brother were being subpoenaed All of this was done in a very public way. Every month there was a parade of new witnesses called to appear at the grand jury in Montgomery, all in front of the ever-present eyes of the Alabama media who chronicled each witness in every newspaper and every television station across the state.

With each passing month and grand jury session, it became more and more evident that despite what we had been told earlier, the investigation was moving toward formal charges. While my point of contact with prosecutors was with the U.S. Attorney's office in Montgomery, it was clear that the Public Integrity Section at the Department of Justice was playing a major role in every decision being made. We were told specifically that Noel Hilman, the head of the Public Integrity Section, was taking an active role in the investigation and that nothing would go forward without his approval. In fact, as we continued to press for meetings in an attempt to dissuade prosecutors from bringing charges, we were told that any meetings would have to take place in Washington because Mr. Hilman's schedule did not allow time for travel to Montgomery. That summer, the summer of 2005, at least two meetings were held in Washington, DC at the Department of Justice. Because of a trial and other scheduling conflicts, I did not attend either of those meetings. Quite frankly, it was my opinion that further discussions were a waste of time given that the attitude of the prosecutors has changed direction 180° from the previous summer. Some on our team, however, remained optimistic that the door was still open for us to convince prosecutors to close the investigation without charges and we felt it our duty to our client to keeping trying. So we pressed on with additional discussions in Montgomery as late as September and October. What we didn't know was that the die had been cast and a decision made earlier in the spring to seek an indictment against Gov. Siegelman and Richard Scrushy, and that, in fact, a sealed indictment had already been returned. While I appreciate the

dialogue and candor of our 2004 discussions, I do not believe that discussions that took place over a series of months while sitting on a sealed indictment were in good faith. There is simply no way in my view that the Government would seek the dismissal of a sealed grand jury indictment.

When a superseding indictment was finally returned and made public in October, 2005, it simply confirmed that we had not only been wasting our time, but that it was clear that prosecutors wanted to throw every conceivable charge against the Governor in hopes that something would stick. Over 30 counts of racketeering, bribery, extortion and obstruction of justice were included. It was a stunning turnaround from the attitude of the previous summer.

Because of a trial conflict in the spring of 2006, and the Governor's insistence on a speedy trial before June 2006 primary, I had no real choice but to withdraw as lead counsel. However, facing incredible challenges in sifting through mountains of discovery in a short period of time, Gov. Siegelman was the beneficiary of exceptional legal talent lead by attorneys Vince Kilborn, David McDonald and Redding Pitt. But at the end of the day, despite acquittals on an overwhelming number of the charges, matters involving Mr. Scrushy and one obstruction of justice count did stick, and Gov. Sigelman was convicted. As you are aware, following sentencing, an appeal bond was denied and he was shackled and taken into custody from the courtroom.

Recently allegations of improper influence by the White House into decisions at the Department of Justice have been front and center with this Committee and the public. In what appears to be an effort to deflect attention away from Washington's role in the decisions regarding Gov. Siegelman, it has been widely reported in the media that the decision to seek an indictment rested solely with the Acting U.S. Attorney in Montgomery. Those statements, Mr.

Chairman, are totally contrary to my experience as a United States Attorney. The Public Integrity Section acted more than in just an advisory capacity. They were an integral part of this effort. Moreover, the U.S. Attorney's manual and Department of Justice guidelines give supervisory power to Public Integrity in cases such as these.

Finally, Mr. Chairman, and meaning no disrespect to Mr. Franklin at all, it is my opinion that the Department of Justice would not, and should not, give sole decision making authority in a high profile public corruption case to an "Acting" U.S. Attorney. Oversight in such a case is critical and statements to the contrary, as we have seen here, only highlight concerns that partisan politics played a significant, if not dominant role, in how this investigation proceeded.

Mr. Chairman, many may take note of the fact that it was a jury that convicted Gov. Siegelman, not the Department of Justice, and suggest that the Department should devote whatever resources to ferret out public corruption. Certainly investigating and prosecuting public corruption cases should be a top priority of any Administration. But prosecutors wield enormous power and the proper use of that power is fundamental to our system of justice. Targeting individuals, rather than crimes, taints that entire process and gives investigators and prosecutors an "ends justify the means" license to abuse the public's trust. It turns the presumption of innocence and due process of law upside down and calls into question the actual validity of any jury verdict. Remember Mr. Chairman that, while our jury system is the greatest in the world, it is not infallible. Innocent people are often sent to prison and guilty people are often set free. The issue of selective prosecution is important for the Committee's consideration because, as Dr. King stated: "Injustice anywhere is a threat to justice everywhere."

Mr. SCOTT. Thank you.

And I thank all of our witnesses for their testimonies. As has been suggested, the full written statements in their entirety will be entered into the record.

I would like to enter into the record a petition in support of urging the United States Congress to investigate the circumstances surrounding the investigation, prosecution, sentencing and detention of Don Siegelman, the former governor of Alabama, that is signed by 44 former state attorneys general urging the Congress to take that action.

Without objection, that will be placed in the record.

[The information referred to follows:]

July 13, 2007

To: Honorable John Conyers, Jr.
Chairman, House Judiciary Committee
2426 Rayburn Building
Washington, DC 20515

Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

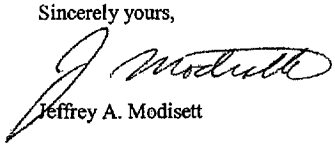
Re: Petition in Support of Governor Siegelman

We hereby submit the enclosed petition signed by 44 former state attorneys general urging the United States Congress to investigate the circumstances surrounding the investigation, prosecution, sentencing and detention of Don Siegelman, the former Governor of Alabama.

As Chairs of the Judiciary Committee of the House and Senate, we urge you to incorporate the Siegelman case into your ongoing inquiry concerning potential inappropriate political interference in the offices of United States Attorneys.

It is imperative to maintain the integrity of the justice system so as to ensure the public's confidence in its objectivity and independence.

Sincerely yours,



Jeffrey A. Modisett

Robert Stephan

Robert Abrams

Grant Woods

(Jeffrey Modisett signing for himself and for Robert Abrams, Robert Stephan and Grant Woods with their permission)

644803.1

To the House & Senate Judiciary Committees:

We, the undersigned former state attorneys general – both Democrats and Republicans – urge the U.S. Congress to investigate the circumstances surrounding the investigation, prosecution, sentencing, and detention of Don Siegelman, the former governor of Alabama. As the former chief law enforcement officers for our respective states, we honor the rule of law, the sanctity of juries, and the important deterrent effect of prosecution and – in most cases -- incarceration. We are also reticent to argue the facts of a case where we have not had an opportunity to personally review each piece of evidence and its relationship to the applicable law.

However, as numerous national and state media have pointed out, there is reason to believe that the case brought against Governor Siegelman may have had sufficient irregularities as to call into question the basic fairness that is the linchpin of our system of justice. We urge the Congress to take immediate action to investigate this entire matter so that the public may be assured that the outcome is just.

While we do not know all of the facts of this case, we do know the following:

(1) Governor Siegelman is currently incarcerated at a Bureau of Prisons facility, having been refused release on bail pending appeal. Indeed, he was even denied 45 days to report to prison to give him time to put his affairs in order, an opportunity which is commonly granted.

(2) A lawyer who had worked in the campaign of Governor Siegelman's opponent in the 2006 gubernatorial contest has sworn in a recent affidavit that the spouse of the federal

prosecutor in this case stated that his wife and another federal prosecutor would "take care of" Mr. Siegelman and that he had talked with a political operative for the White House concerning such assurances.

(3) In an unrelated but recent case, a low-level employee in another state administration was prosecuted and convicted by another U.S. Attorney before a U.S. Court of Appeals ordered her immediate release from prison and reversed the trial verdict calling the prosecution evidence "beyond thin."

(4) Another former Governor of Alabama was convicted of corruption charges a few years ago in a case where he personally benefited from his action and was sentenced to probation. That case was handled by the same lead prosecutor as in the Siegelman case.

(5) The sentence sought by the prosecutor in Governor Siegelman's case -- 30 years -- was excessively disproportionate, and the sentence imposed -- 7 years, 4 months -- was harsh.

(6) While we are not privy to all the evidence, we are aware that there are numerous apparently legitimate (and arguably compelling) appealable issues in this case, as confirmed by a number of legal scholars. There have been allegations of jury misconduct and the possible introduction of extrinsic evidence into the jury deliberation process that have not been fully investigated. For this reason, and because Governor Siegelman is not in any way a flight risk, the denial of a bond pending appeal appears inappropriate, and the shackling of the Governor in handcuffs and leg irons as he was taken out of the courtroom was shocking.

The U.S. justice system should be above reproach. The only way to convince the public that the Governor is not the victim of a politically motivated double-standard is for Congress to investigate all aspects of the case thoroughly.

Jeffrey A. Modisett-Indiana
Robert T. Stephan-Kansas
Robert Abrams-New York
Grant Woods-Arizona

Ken Eikenberry-Washington
M. Jerome Diamond-Vermont
W.J. Michael Cody-Tennessee
Bonnie J. Campbell-Iowa
Neil F. Hartigan-Illinois
Larry EchoHawk-Idaho
Mike Moore-Mississippi
Scott Harshbarger-Massachusetts
Chris Gorman-Kentucky
Charles Oberly-Delaware
Andrew Ketterer-Maine
Dennis J. Roberts, II-Rhode Island
Joseph P. Mazurek-Montana
Michael Lilly-Hawaii
Mary Sue Terry-Virginia
Michael C. Turpen-Oklahoma
Robert J. Del Tufo-New Jersey
Richard Ieyoub-Louisiana
Richard Opper-Guam
Richard Wier-Delaware

John K. Van de Kamp-California
Walter W. Cohen-Pennsylvania
Frank J. Kelley-Michigan
Francis X. Bellotti-Massachusetts
Heidi Heitkamp-North Dakota
Hubert H. Humphrey, III-Minnesota
J. Knox Walkup-Tennessee
Frankie Sue Del Papa-Nevada
Oliver Koppell-New York
Bruce Botelho-Alaska
Andrew P. Miller-Virginia
Steve Clark-Arkansas
Anthony F. Troy-Virginia
Frank V. Mendocino-Wyoming
Robert H. Quinn-Massachusetts
C. William Ullrich-Guam
Duane Woodard-Colorado
Travis Medlock-South Carolina
Charles G. Brown-West Virginia
Edwin L. Pittman-Mississippi

Mr. SCOTT. Mr. Thornburgh, we cut your testimony off. Was there more that you wanted to say. I think you were about to talk about the FBI agent.

Mr. THORNBURGH. If I could just take a minute to summarize my testimony, it is set forth at length in my written statement, but one troubling aspect of this investigation and prosecution and I think further evidence that it was motivated by something other than a search for justice relates to the conduct of FBI Agent Bradley Orsini, the lead agent assigned to Dr. Wecht's case, as well as the case against the former mayor, and an agent with an unseemly past.

Agent Orsini, while in Newark, New Jersey, was investigated for years by the FBI's Office of Professional Responsibility and found to have falsified official records and FBI Form 302s. He was reprimanded twice for falsification of evidence spanning years, demoted and suspended without pay for 30 days and placed on probation for a year before transferring to Pittsburgh in September 2004.

There are currently motions pending regarding Orsini's actions in connection with three highly publicized warrants he obtained in this case, an admitted violation of Department of Justice policy. Following disclosure of his past reprimands for serial falsification of evidence, at the mandate of the Third Circuit Court of Appeals, prosecutors told three different Federal courts that they do not wish to sponsor Orsini as a witness and went so far as to attempt to prevent us from even bringing up his role at trial. This, we suggest, is further evidence of irregularities in the conduct of the investigation and prosecution of this case.

One final troubling incident, Mr. Chairman, at the news conference announcing the indictment of Dr. Wecht, the United States attorney touted the 84-count indictment against Dr. Wecht, but then added that he had in her own words literally provided unclaimed cadavers to a local Catholic university in exchange for lab space, an allegation we will prove to be totally false and unfounded at trial and which was never even discussed in the pre-indictment meetings we had with Ms. Buchanan and her staff.

Predictably, Dr. Wecht, the Democrat scientist and educator, was forthwith labeled a body snatcher and a media feeding frenzy ensued. The U.S. attorney thus succeeded in the department's apparent mission of casting Democrats in a negative light during the election year.

This, it seems to me, as part of the cumulative record here, indicates a failure and breakdown in the supervision of the conduct of this investigation and prosecution, and we bring it to the Committee's attention for that purpose.

Mr. SCOTT. Thank you.

When you were Attorney General under two different Presidents, could you tell us about the number of people in the Department of Justice that could communicate with numbers of people in the White House and what implications that has in terms of limiting the politicization of the Justice Department?

Mr. THORNBURGH. Primary vehicle for communication between the White House and the Department of Justice was communications between myself and the White House counsel who was then C. Boyden Gray.

I made a rather strict rule about the department speaking with one voice and, unless otherwise exempted in a particular case, that voice to the Administration, to the news media and, indeed, to the Congress was to be the Attorney General. Now, obviously, for practical reasons, that was not always the case, but any conduct with the White House in particular would be subject to review by our office.

Mr. SCOTT. And what implications did that have on politicization of charging decisions?

Mr. THORNBURGH. It was designed to have a prophylactic effect to prevent anyone with designs upon affecting department investigations from attempting to contact people in the Department of Justice. We had a couple of instances where we learned of that and apprised the White House accordingly that that was not the way that we intended to conduct the business of the Department of Justice.

Mr. SCOTT. Thank you. My time is about up.

I yield to the gentleman from Virginia.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. Thornburgh, thank you for being here today. You have heard so many people compliment you on your great record of public service to this country, and we certainly thank you for that.

But taking your own words today, you said you are here today as an advocate for Dr. Wecht, and I assume that your firm represents Dr. Wecht. I think that was your testimony.

Mr. THORNBURGH. Yes, we do. Yes.

Mr. FORBES. And you do not represent him as a part of that public service. You are representing him for compensation, your firm is.

Mr. THORNBURGH. Exactly.

Mr. FORBES. Isn't that correct?

Mr. THORNBURGH. We are engaged——

Mr. FORBES. And you are paid for that?

Mr. THORNBURGH. Exactly.

Mr. FORBES. Now you suggest that these charges should not have been brought against Dr. Wecht. They were brought in a Federal court, as I understand it. Is that correct?

Mr. THORNBURGH. They were indeed.

Mr. FORBES. And did your firm file a motion to dismiss in that matter?

Mr. THORNBURGH. We did.

Mr. FORBES. And a Federal judge heard that case?

Mr. THORNBURGH. Yes.

Mr. FORBES. He was not the prosecutor, was he?

Mr. THORNBURGH. I am sorry?

Mr. FORBES. The Federal judge was not the prosecutor, was he?

Mr. THORNBURGH. No.

Mr. FORBES. And he heard your written statements and he heard whatever arguments you made and he denied your motion to dismiss. Is that correct?

Mr. THORNBURGH. That is correct.

Mr. FORBES. So he basically disagreed with you that the charges should not have been brought. In addition to that, this case is set for trial in January. Is that correct?

Mr. THORNBURGH. That is correct.

Mr. FORBES. The prosecutor could not very well come here today and testify on any of the contrary facts that he might have because if he did that, wouldn't that be unethical for him, and wouldn't that certainly lead to the appearance of him politicizing this issue by coming here and setting forth those claims in a forum like this?

Mr. THORNBURGH. Under department rules, that is true, although I understand that the United States attorney has testified in secret to this Committee.

Mr. FORBES. Well, there is a difference between testifying perhaps if you are required to testify somewhere else and between in a public forum like this, isn't it?

Mr. THORNBURGH. Well, it is, indeed, but on occasion, when I was Attorney General and when I was myself a U.S. attorney, testimony was given to Committees of Congress who had a legitimate oversight interest in particular matters——

Mr. FORBES. Well——

Mr. THORNBURGH [continuing]. And that rule is not a hard-set rule.

Mr. FORBES. So then you would suggest it would have been more appropriate if the Democratic majority actually called her in to answer questions to them? You would suggest that it would have been better for the prosecutor to be able to come in a public hearing like this before the case was tried in January to talk about the case?

Mr. THORNBURGH. I think in this instance where the Committee has expressed such a high degree of interest in the circumstances surrounding this prosecution, that might be appropriate. I do not know what her testimony was. I am merely responding, at your request, at this Committee's request——

Mr. FORBES. Well, we have not finished——

Mr. THORNBURGH [continuing]. To present the point of view of a person charged with a highly irregular pattern of crimes. We will argue the case to the jury and defend this individual——

Mr. FORBES. Mr. Thornburgh, my time—I do not have quite the same privilege that you do. I will be cut to 5 minutes. So I am just going to say I understand you will argue that case. I think that is appropriate to do. I would just be very concerned if the attorney trying this case came here and presented all these facts and discussed it today. I think that would be highly inappropriate for her, and I think we end up not having that.

Mr. Shields, in your report—and let me just make sure I am correct here—by your own study, you put, "This is not a longitudinal study." I am sorry. "This longitudinal study is not a legal study. It does not purport to track the actual case history of any individual, other than as it may have been reported in the news story or the Federal press release." Is that true?

Mr. SHIELDS. Yes, that is true.

Mr. FORBES. So you based yours on the press release?

Mr. SHIELDS. Well, no, the Justice Department will not release the data on cases. Mr. Congressman, as you well know, the Justice Department will not release the data on the actual investigations and——

Mr. FORBES. In fact——

Mr. SHIELDS [continuing]. Who they are investigating, but——

Mr. FORBES. Mr. Shields, my time is about out, but we just had a hearing last week, and one of the witnesses came up and said, "Thank you for at least pointing out that prosecutors oftentimes cannot disclose all the information." Oftentimes, the information is not disclosed out of there, but one of the things——

Mr. SHIELDS. Well, if they had not——

Mr. FORBES. Mr. Shields, you can respond to anybody else. I do not have much time. I have about 30 seconds.

Mr. SHIELDS. Okay.

Mr. FORBES. But we had some investigations by the Justice Department. You have Robert Nell. You got Jack Abramoff. You got David Safavian . You got Neal Volz. You got Tony Rudy. You got Roger Stillwell. And we hear a lot of people come in and say, "Look at all this corruption by the Republicans," and I am sure some of them felt that that was improper and wrong, too.

Mr. Jones, I do not have much time to ask you any questions, but I know that when the initial allegation against Governor Siegelman were brought up, you were the U.S. attorney at that time—is that correct—or at some point in time when those allegations——

Mr. JONES. In the Bobo investigation, they were never brought up. What I said in my statement was an assistant attorney general for the state hoped they were going to go that far. It never came up. So——

Mr. FORBES. But you subsequently testified you are a longtime friend of Governor Siegelman's, right?

Mr. JONES. Oh, yes. Yes.

Mr. FORBES. And at one point in time, you were trying a case, and did the court ask you to stop?

Mr. JONES. Well, after the Bobo case was reversed and came back and Governor Siegelman was, in my opinion, shockingly included in that, I sought to continue to represent him. I was his lawyer at that time, but because I had initially agreed that the early Bobo case that did not include Siegelman come to my district, Judge Clemens felt that that would not be appropriate for me to represent him.

Mr. FORBES. So you disagreed with him, but the judge told you that you could not represent him in that case?

Mr. JONES. Yes.

Mr. FORBES. And also you have given significant campaign contributions to Federal candidates across the country, Democrats, including Members on this Committee, correct?

Mr. JONES. Yes, sir.

Mr. FORBES. Okay.

Mr. Chairman, thank you for your patience. My time has expired.

Mr. SCOTT. Thank you.

The gentlelady from California?

Ms. SÁNCHEZ. Thank you.

Mr. Thornburgh, you served as the U.S. attorney for the Western District of Pennsylvania, the very district in which Dr. Wecht is charged with corruption. Is that correct?

Mr. THORNBURGH. That is correct.

Ms. SÁNCHEZ. Okay. In your testimony, you mentioned that his indictment is not one which normally constitutes a corruption case. What would a normal corruption case resemble, and is there a threshold of activity that you looked for when you were the U.S. attorney in bringing those types of charges?

Mr. THORNBURGH. The normal type of corruption, in my view, is where there is a bribery case, an extortion case, a conflict of interest that gives rise to some financial gain for an officeholder, as distinguished from a series of minor irregularities that are apparent in this case that under a broad reading of the Federal mail fraud and theft of services statutes have attempted to be converted into Federal felonies, and that is what brought my attention to this case and these aspects I have discussed this morning.

Ms. SÁNCHEZ. So, in your opinion, the case that is brought against Dr. Wecht is not the typical kind of corruption case that you hear about in the news headlines about——

Mr. THORNBURGH. Absolutely.

Ms. SÁNCHEZ [continuing]. People taking bribes, quid pro quos or favors or those types of things?

Mr. THORNBURGH. Absolutely. They all relate, I might add, to the conduct of his outside business, a practice that is expressly condoned by the authority under which he holds office. There is nothing sinister about him holding public office and doing the outside business, and——

Ms. SÁNCHEZ. In fact, that outside business sometimes helped prosecutors in some of the counties?

Mr. THORNBURGH. In large part, he was engaged by prosecutors in outlying counties, more rural counties where they did not have the forensic pathology capability available, and he did that not only in Pennsylvania, but across the Nation and, in fact, in major high-profile cases because of the wide respect that he has attained.

Ms. SÁNCHEZ. I am interested in getting at the particulars of this case. I have read your written testimony, and you indicated that the U.S. attorney's office in the Western District of Pennsylvania has taken an overly expansive view of Federal criminal jurisdiction to effectively transform common events in the public workplace into Federal felonies, and one of the examples, if you could just refresh my memory, involved faxes and a total net worth of about—the number of $24 sticks in my mind.

Mr. THORNBURGH. Well, I do not know what the exact amount befixed on the use of a fax machine, but, in point of fact, a number of the counts in this indictment relate to Dr. Wecht's alleged use of a county fax machine to send his curriculum vitae or to send his fee schedules or to send reports to some of those agencies for which he had done outside work or to other sources that had requested him to speak. He is widely known as a speaker on these issues. And each one of those illicit, supposedly, uses of the fax machine is charged as a felony in this indictment. It does not make any sense.

Ms. SÁNCHEZ. I would agree with you. I think that most people occasionally use a fax machine in their office to conduct stuff that perhaps is not directly related to their work, but——

Mr. THORNBURGH. It is probably not ethical, but hardly a Federal felony.

Ms. SÁNCHEZ. A Federal felony. How would you suggest that Congress change the law so that public corruption cases are based on evidence of criminal activity rather than ordinary types of events in the public workplace?

Mr. THORNBURGH. I think a review of the type suggested by Judge Easterbrook and cited in my written statement would be in order of these statutes that are so loose in their potential application, notably section 666 and 1346, which he said have an open-ended quality to them that permits prosecutors to kind of define the crime themselves. I think the Congress ought, in its oversight function, to examine precisely how those statutes have been interpreted and to tighten them up, and——

Ms. SÁNCHEZ. So that we are not charging people with Federal felonies for taking pencils home from their workplace?

Mr. THORNBURGH. Exactly. Exactly.

Ms. SÁNCHEZ. In your written testimony, you also indicate that the public's perception of apparent politics at the Department of Justice will not be easily changed or remedied. I am interested in knowing what steps could the Attorney General take to change the public perception that improper political considerations are being injected into prosecutorial decision-making at the Department of Justice.

Mr. THORNBURGH. I think an important step has already been taken in that regard with the appointment, subject to Senate confirmation, of Judge Michael McCasey, a widely respected jurist who has experience in the Department of Justice and who, as noted here today, at his hearing testified that partisan politics should play no part in either bringing of charges or the timing of charges, and the timing is important as well, as we pointed out in our statement, that these cases were all brought against Democrats in the run-up to the 2006 election.

But Judge McCasey has clearly indicated his concern over these allegations, over the image of the department, over the integrity and reputation of the department, and I think he will ask for and deserves the support of your Committee and its counterparts in the other House.

Ms. SÁNCHEZ. Thank you, Mr. Thornburgh.

I yield back the balance of my time.

Mr. SCOTT. Thank you.

The gentleman from Florida, Mr. Keller?

Mr. KELLER. Well, thank you very much, Mr. Chairman.

Mr. Thornburgh, I do not know if Dr. Wecht is guilty or not. I do know that the Federal judge will ensure that the trial is conducted based on witnesses with personal knowledge, documents which are authenticated and admissible evidence.

Your testimony is that there is a perception of an appearance that Dr. Wecht may have been prosecuted for being a Democrat because the prosecutor might be trying to please the White House, possibly to advance her own career. Your testimony, to be blunt, is the most pathetic example of speculation and innuendo and hearsay that I have seen in 7 years on this Committee.

I think it is totally ridiculous to imply that the President of the United States would call up a United States attorney and say, "Why don't you go find some local Democrat elected official, pref-

erably a dog catcher or coroner, and prosecute the hell out of them to help us keep the U.S. Congress in Republican hands?" It is so farfetched, I am almost embarrassed to be an attorney listening to it.

And you go so far as to buttress your unsupported assertions by quoting a local opinion columnist who then speculates that "U.S. Attorney Mary Beth Buchanan might well consider Dr. Wecht a plum target, good for many brownie points at the White House." I think it is fair to say that is a pretty tenuous argument for questioning the honor and integrity of a United States attorney.

So let me get back to some of the real evidence issues here and ask you do you, sir, have any personal knowledge of any conversations between U.S. Attorney Buchanan and the President in which it was discussed that Dr. Wecht should be prosecuted because he is a Democrat?

Mr. THORNBURGH. I would be mortally embarrassed if I had come before this Committee and made a charge that the President of the United States had had conversations with U.S. Attorney Buchanan.

Mr. KELLER. I will take that as a no.

Mr. THORNBURGH [continuing]. For such statements, and you should be cited for misciting the record.

Mr. KELLER. Well, it is right there. I am quoting your statement.

Mr. THORNBURGH. I did not ever say that the President of the United States had any discussions with Ms. Buchanan.

Mr. KELLER. Do you have any personal knowledge of any conversation between any White House officials and the U.S. Attorney Buchanan in which it was discussed that Dr. Wecht should be prosecuted for being Democrat?

Mr. THORNBURGH. Ms. Buchanan's testimony to this Committee was given in secret, and I have no access to that, so I cannot answer that.

Mr. KELLER. You have no such personal knowledge, do you?

Mr. THORNBURGH. Not at this point.

Mr. KELLER. Do you have any personal knowledge of any conversation between any Department of Justice official and U.S. Attorney Buchanan in which it was discussed that Dr. Wecht should be prosecuted because he is a Democrat?

Mr. THORNBURGH. No, I might remind the Member that the Department of Justice has refused to make any of this information available to this Committee.

Mr. KELLER. You do not have any personal knowledge——

Mr. DAVIS. Mr. Chairman, point of order.

Mr. KELLER. I would like my question answered.

Mr. DAVIS. Point of order, Mr. Chairman. May the former Attorney General of the United States be allowed to finish his answer?

Mr. KELLER. I can reclaim my time anytime I like.

Mr. SCOTT. The Committee will come to order.

Mr. KELLER. Yes.

Mr. SCOTT. The gentleman will proceed. We would appreciate it if you would, if you are going to ask a question, give him an opportunity to respond.

Mr. KELLER. I would like an answer. Do you have any personal knowledge of any conversation between U.S. Attorney Buchanan

and any Department of Justice official whence it was discussed that Dr. Wecht should be prosecuted because he is a Democrat?

Mr. THORNBURGH. Obviously not.

Mr. KELLER. Do you have any personal knowledge of any conversation between U.S. Attorney Buchanan and anyone on this planet in which it was discussed that Dr. Wecht should be prosecuted because he is a Democrat?

Mr. THORNBURGH. Obviously not, since I have no access to the public record created by her testimony.

Mr. KELLER. Have you seen any letter or other document between the U.S. attorney and any person on this planet in which it was discussed by U.S. Attorney Buchanan that she was pursuing Dr. Wecht because of his political affiliation as a Democrat?

Mr. THORNBURGH. What we have done is respond to this Committee's request in your investigation of allegations of political influence with a set of facts that raise real questions about why this prosecution was initiated in the first place. We do not have access, as you do or as other authorities might have, to the record that would seek to verify those facts, but we have raised these questions, and we think that is a legitimate role for the Congress to play in its oversight function.

Mr. KELLER. Mr. Attorney General, you have not seen any letter or other document?

Mr. THORNBURGH. No, of course not.

Mr. KELLER. Okay. You have made the factual assertion that the Department of Justice demonstrated that if you play by its rules, you will advance. Can you give me the U.S. attorney whose career has advanced solely because he or she prosecuted Democrats?

Mr. THORNBURGH. Those were disclosures made in the course of the investigation being carried on into political influence within the department.

Mr. KELLER. Do you have the name of any U.S. attorney who——

Mr. THORNBURGH. Have I spoken with him personally?

Mr. KELLER. The name?

Mr. THORNBURGH. I relied on news accounts and other authorities that——

Mr. KELLER. Tell me the name of the U.S. attorney who was promoted, advanced, according to what you said, because he or she prosecuted a Democrat?

Mr. THORNBURGH. I cannot give you that information specifically now.

Mr. KELLER. Mr. Chairman, my time has expired.

Mr. CANNON. Mr. Chairman, may I inquire about just a matter of order in the Committee? We have had a couple of times when Republicans have been questioning witnesses, not just in this Committee, since we actually have not met as a joint Committee before, but in the full Committee. I think Mr. Davis made a point on a couple of occasions that the Member should let a witness answer.

There is no rule, I believe, that requires that a witness should answer. We have the right to inquire, I believe, and if we are a little coarse with a witness, I think that is appropriate, because sometimes we have witnesses that are a little bit not forthcoming, so I think it would be——

Mr. DAVIS. Mr. Chairman, if I might respond?

Mr. CANNON. Well, pardon me. I——

Mr. SCOTT. The Committee will——

Mr. DAVIS. My name was invoked.

Mr. CANNON. May I just finish by saying that if the Chair would please make it clear that it is the gentleman's time or the gentlelady's time who is making the inquiry, I would appreciate that.

Mr. SCOTT. The Committee will come to order.

And we would appreciate, just as a matter of courtesy, that if you ask the witness a question that the witness be allowed to answer. Depending on who the witnesses are, it goes both ways, but we will try to be courteous to the witnesses the best we can.

Mr. KELLER. Mr. Chairman, if I can just interject, if I am asking a witness a question, I am not required to sit here and listen to 5 minutes of nonresponsive sentences under any scenario——

Mr. SCOTT. Well, the gentleman was given——

Mr. KELLER [continuing]. And I will not.

Mr. SCOTT. All of the——

Mr. FORBES. Mr. Chairman, can I ask for some courtesy for the former Attorney General of the United States?

Mr. SCOTT. The Committee will come to order.

The opinions have been expressed, and we will move on to the next person who is the gentleman from Michigan, Chairman of the full Committee.

Mr. CONYERS. Thank you. I thank you for keeping us in order and lowering the emotional level that was beginning to rise here. You are a great Chairman.

Now I want to help the gentleman from Florida out. I have the name of a case he may want to inquire when he was asking of General Thornburgh. If you will examine the case involving U.S. Attorney Steven Biskupic, who was on the list to be fired and, after he indicted Georgia Thompson, his name was restored. His name was taken off the list. So he did not get a promotion, but he did keep his job.

And so what I would like to do now is to ask Attorney General Thornburgh if he wanted to make any further elaboration, as eager as I am to move on, to the questions that were put to him by my friend from Florida?

Mr. THORNBURGH. No, Mr. Chairman. I think the distinction that I am trying to make is that we are engaged by our client to protect his rights and will vigorously defend him in the criminal trial set for January.

Mr. CONYERS. Thank you.

Mr. THORNBURGH. There is a separate role, however, as the Committee clearly recognizes in the calling of this hearing, the oversight role that this Committee has over the conduct of the Department of Justice and an examination whether allegations of political influence have been present in these cases, and it is for that reason that we appear today and set forth the testimony that we did.

Excuse me for interrupting you, Mr. Chairman.

Mr. CONYERS. No, that is quite all right.

As a matter of fact, the hearing is cautiously entitled Allegations of Selective Prosecution. I commend the two Chairs for their discretion in titling the hearing.

But we started off earlier in the year with the politicization of the Department of Justice. These hearings follow along to allegations of prosecutorial abuse. That is a very direct connected line. This is not some off-the-wall hearing. This directly follows the work of both these Subcommittees that we have gone along.

Now somehow this former U.S. attorney from Alabama has persuaded me to give him a minute of my time, so when I get to 4 minutes, would somebody please advise me so I can recognize him? The yellow light will come on.

Okay. Thanks, Mel Watt. I will remember this.

Before the yellow light comes on, I want to put in here everything I have said has been beyond controversy, and I just want to start off with the statement of the prosecutor from Louisiana to show you how far prosecutors have gotten out of line.

He infamously stated to a room full of schoolchildren, "I can ruin your life with the stroke of a pen." Can you imagine a state prosecutor talking to a group of schoolchildren like that?

And then I have for the record, just for those of you who may not remember it, when Attorney General Gonzales spoke before U.S. attorneys, he said, "I work for the White House, and you work for the White House," and as a matter of fact, it cost one U.S. attorney his job, if our investigation was correct.

And then there is Monica—oh, the light went on. Okay, there is Monica Goodling who was nervously called into the White House by then Attorney General Gonzales, and she was interviewed about her steadfastness in her position as liaison to the White House, and she admitted sitting right in the chair that Donald Fields is in that, "Yes, I did cross the line a number of times in my job."

And I yield now to my friend from Alabama, Artur Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

I want to make one quick point before too much time goes forward in the hearing.

And I thank the Chair for yielding.

The very able Ranking Member is a good friend of mine, Mr. Forbes. I was surprised by an assertion that he made during his opening statement regarding Jill Simpson, one of the witnesses in the Siegelman case. My friend, Mr. Forbes, at one point suggested that Ms. Simpson's testimony had been conclusively debunked, as he put it, and he amazed me by somehow suggesting that the Committee should refer her for prosecution.

One point that I hope my friend from Virginia will take note of—and I would ask unanimous consent to introduce Exhibit 4 to the Simpson deposition into the record. Exhibit 4 to the Simpson deposition is a list of wireless phone calls made from her phone—if you examine the phone list, on November 18, 2002, the date that she contends that she made a phone call to Rob Riley and others, there is a number listed, 205–870–9866, 11/18, duration for 11 minutes.

All three affidavits submitted from Mr. Butts, Mr. Lembke and Mr. Riley deny that there was a conference call that occurred on November 18.

I ask to also introduce into the record a search for law firms in Alabama on NetOpus.net. Enter the law firm name Riley Jackson. The following phone number comes up, 205–870–9866——

Mr. SCOTT. The gentleman's time——

Mr. DAVIS [continuing]. The exact same phone number that surfaces in Exhibit 4.

Mr. Forbes, in light of that revelation that these three affidavits are contradicted by the phone record, I ask you to withdraw your statement, sir, regarding possible perjury by Ms. Simpson.

Mr. SCOTT. Is the gentleman asking unanimous consent to put these into the record?

Mr. DAVIS. Yes.

Mr. SCOTT. Without objection.

[The information referred to follows:]

AFFIDAVIT

Comes now the undersigned Affiant and, after having been duly sworn, states on oath to the best of my recollection, information, and belief, the following statements set forth in paragraphs one through six are true and correct:

My name is Robert R. Riley Jr. I am an attorney practicing law in Birmingham, Alabama at the law firm of Riley & Jackson, P.C. I graduated from the University of Alabama in 1988 with a degree in Economics, Yale Law School in 1991, with a J.D. degree, and the University of Cambridge (England) in 1992, with a LL.M. degree. My father, Bob Riley, was elected Governor of Alabama in November, 2002 and was re-elected Governor in November, 2006.

I have no memory of being on a phone call with Jill Simpson ("Ms. Simpson") on November 18, 2002. Furthermore, I do not believe a phone call occurred that involved Ms. Simpson, former Alabama Supreme Court Justice Terry Butts ("Mr. Butts"), Bill Canary ("Mr. Canary"), and myself on November 18, 2002 in which Mr. Butts allegedly stated that he would confront former Alabama Governor Don Siegelman ("Mr. Siegelman") with photographs of a political prank, described in the following paragraph, and would attempt to convince Mr. Siegelman to concede the election based on said photographs, or that Mr. Canary allegedly made statements to the effect that "his girls" would take care of Mr. Siegelman, or that "Karl" had spoken to, or gone over to, the Department of Justice and that the Department of Justice was pursuing, or would pursue, a case against Mr. Siegelman.

I have never been told by Mr. Butts, or anyone else, that Mr. Butts spoke with Mr. Siegelman on November 18, 2002, and convinced Mr. Siegelman to concede the 2002 campaign for Governor. Other than from Ms. Simpson's Affidavit, I have never heard anyone say that Mr. Siegelman conceded the election in exchange for not releasing photographs of a political prank involving Democratic operatives putting up Riley for Governor signs at a KKK rally. Other than in Ms.

Simpson's testimony of September 14, 2007, I have never heard that Mr. Siegelman conceded the election in exchange for immunity from prosecution. I have never made a statement to Ms. Simpson that there was an agreement between Mr. Butts and Mr. Siegelman regarding Mr. Siegelman's concession of the 2002 campaign for Governor.

I do not believe that I have ever met or spoken with Judge Mark Fuller ("Judge Fuller"). Other than what I have read in Ms. Simpson's testimony and the documents that I understand she produced at the time of her testimony, I have no knowledge of any ownership in any business or alleged grudges Ms. Simpson says Judge Fuller holds against Mr. Siegelman, and I never discussed such with Ms. Simpson. I have spoken with Stewart Hall ("Mr. Hall") since Ms. Simpson's testimony was released. Mr. Hall has told me that, to the best of his recollection, he has never met or spoken with Judge Fuller at any time in his life, nor does he have knowledge of any businesses in which Judge Fuller has been involved or any alleged grudge that Judge Fuller has against Mr. Siegelman. Ms. Simpson stated in her testimony that she understood that Judge Fuller was in "college" at "Alabama" with Stewart and me. It is my understanding based on an internet search that Judge Fuller graduated from college at the University of Alabama in 1982. I began college at the University of Alabama in 1984. Mr. Hall has told me that he began college at the University of Alabama in January, 1985.

I have never requested Karl Rove's ("Mr. Rove") assistance to "speed up" checks for any of Ms. Simpson's clients, or his assistance on any other federal matter, nor have I ever told Ms. Simpson that I was doing so. Ms. Simpson's belief that I e-mailed a copy of a document to Mr. Rove regarding a matter associated with a FEMA appeal is not correct. The document that Ms. Simpson has discussed in her testimony was sent to Mr. Karl Dix, who is an attorney in Atlanta,

Georgia, practicing with the law firm of Smith, Currie, and Hancock, who provided assistance with the appeal. Furthermore, I did not tell Ms. Simpson that Mr. Rove was assisting with this project.

I have not been told or provided information that Mr. Siegelman would be prosecuted if he ran for political office again after the 2002 election; that Mr. Rove had spoken to someone about prosecuting Mr. Siegelman; that Judge Fuller was going to be appointed the Judge of the Siegelman-Scrushy case; that a case would be brought against Mr. Siegelman and Mr. Scrushy or that specific charges were going to be brought against them; nor have I made statements to this effect to Ms. Simpson. Furthermore, at no time have I participated, in any manner or way, in the criminal prosecutions of Mr. Siegelman or Mr. Scrushy.

Robert R. Riley, Jr.

Robert R. Riley, Jr.

In Jefferson County, Alabama, on the 22nd day of October, 2007, before me, a Notary Public in and for the above-state and county, personally appeared Robert R. Riley, Jr., known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he or she executed said instrument for the purposes therein contained as his of her free and voluntary act and deed.

Natalie Bastem

Notary Public
My commission expires: 03/02/10

TERRY LUCAS BUTTS
ALABAMA SUPREME COURT JUSTICE (RET.)
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STATEMENT OF TERRY LUCAS BUTTS

My name is Terry Lucas Butts. I received my law degree in 1968 from the University of Alabama Law School. Following law school, I practiced law in Elba, Alabama, for eight years. I then became a Circuit Court Judge, ultimately serving some 23 ½ years as a judge, before retiring from the Alabama Supreme Court in 1998 to run as the Democratic nominee for Attorney General of Alabama against then appointed incumbent Attorney General Bill Pryor. After losing the 1998 race to Attorney General Pryor by three-tenths of one percent, I returned to the active practice of law, practicing in Troy, Alabama, in ultimately an eight person law firm. I left this firm and practice in 2005, returning to my home town of Luverne, Alabama, where I resided, to open my separate law practice, which continues today.

Since leaving the judicial bench, among my clients have been Governor Bob Riley, Former Alabama Chief Justice Roy Moore, and Former CEO of HealthSouth Corporation, Richard Scrushy, in respective matters.

After the November 2002 general election in Alabama, then challenger Bob Riley prevailed over then incumbent Governor Don Siegelman by some 3,100 votes. Governor Siegelman immediately began a legal challenge to obtain a recount of the votes. Along with Attorney Matt Lembke of the firm Bradley/Arant in Birmingham, I was employed by Governor-elect Bob Riley to resist the recount challenge.

For nearly two weeks, co-counsel Matt Lembke and I (along with other attorneys who assisted locally in various counties, but those attorneys did not include Dana Jill Simpson) "punched and counter-punched" all over the State, with Governor Siegelman's attorneys Joe Espy and Bobby Segall, both of Montgomery, and "Boots" Gale of Birmingham, as to Governor Siegelman's efforts to obtain vote recounts and our efforts to block any recounts.

I take up Mrs. Simpson's allegations involving me as follows:

1. Ms. Simpson alleges a conference call occurring on November 18, 2002. As I recall that day, Attorney Matt Lembke and I arrived within minutes of each other at approximately 9:00 am, at Rob Riley's law office in Birmingham. Rob Riley's office had come to be headquarters for the election recount challenges.

   On November 18, 2002, Matt and I spent the entire morning working together with Rob Riley in Rob's law office. As I recall, some time in the afternoon, Toby Roth (I believe) stuck his head in where we were all working, advising that a call had just been employed

from someone in Governor Siegelman's campaign inquiring as to when Governor Siegelman could speak by phone with Governor Riley.

During the afternoon, Matt and I were in Rob Riley's law office with Governor Riley, Rob Riley, Steve Windom, Toby Roth, and others standing in the doorway – in fact, Matt and I pulled up chairs by Governor Riley and waited with him for the call. The call came sometime thereafter. While I could not hear Governor Siegelman's end of the call, I could hear Governor Riley's. The two men had a very amicable and friendly conversation. When Governor Riley hung up the phone, he stood up, Matt and I stood up, and Governor Riley put an arm around each of us, hugging us to him, and said: "The winning team". Rob Riley had a camera and snapped a photo. There were then hugs and handshakes all around and that was the end of it.

Later, after Governor Siegelman conceded publicly, we all rode with Governor Riley to his press conference. I recall we were all exhausted because there had been some days of around the clock working on the various pending lawsuits and the various legal briefs. I do not believe, nor do I recall, any conference call occurring with Ms. Simpson. In fact, during the entire recount controversy, Matt Lembke and I never did anything involving the issues, including conference calls, unless we did it together and with both consultation/concurrence by both of us on any matter, as we were the lead attorneys. Further, on November 18, 2002, Matt and I were never outside of each other's presence for any length of time for any phone conferences.

2. As to Ms. Simpson's allegations about concern over a Ku Klux Klan rally involving campaign signs of Governor Riley, I simply do not know of anyone who would give a good Southern "damn" or a "hoot-in-hell" about what the KKK thinks, either before, during, or after an election on any issue. Certainly this would be particularly true as to the placing of anyone's campaign signs at a Klan rally <u>after</u> an election.

3. As to Ms. Simpson's allegations concerning me approaching either Governor Siegelman or some of his "campaign people" about Governor Siegelman conceding the election and in return the KKK allegations, as well as that any Federal investigation/prosecution would end, that simply did not happen.

   I could not ethically (and did not) approach another attorney's client (in this instance Governor Siegelman), nor did I contact any of Governor Siegelman's "campaign people". Additionally, I would have no authority to prevent, stop, or end any Federal or State investigation/prosecution of anyone. That kind of authority derives only from State or Federal Attorney Generals, State District Attorneys, United States Attorneys, or the United States' Justice Department, none of whom was I in contact with concerning any investigation/prosecution of Governor Siegelman as alleged by Ms. Simpson.

4. Along with other co-counsel, I did help represent former HealthSouth CEO Richard Scrushy in the Middle District Federal Court of Alabama in 2006, wherein former Governor Don Siegelman was a co-defendant. While there is much that can be said about

that trial, I continue to believe that both Richard Scrushy and Don Siegelman were erroneously convicted and that their respective convictions should be reversed on appeal for many trial errors. However, I did not (as Ms. Simpson alleges) "go back and tell the Governor things" about Mr. Scrushy's case. Neither did I discuss Mr. Scrushy's case with Rob Riley. Again, these allegations by Ms. Simpson did not happen.

Additionally, there is just simply no conflict of interest on my part in having represented Mr. Scrushy, as Ms. Simpson's allegations on that issue are not true. In fact, the first time I ever heard of Ms. Simpson and/or her allegations was in May 2007 when I received media calls about her allegations.

5. Finally, among other general matters that I recall on November 18, 2002, co-counsel Matt Lembke, Rob Riley, and I were together in Rob's office on the mentioned date. As I recall, none of us were ever outside each other's presence on that day for any length of time, so if a conference call with Ms. Simpson occurred as she alleges, I am confident we would remember it, particularly, in light of the comments she alleges. Again, I neither recall any such call, nor do I believe any such call/conversation as alleged ever took place.

   Further, Bill Canary was not present with us on November 18, 2002, nor do I ever recall any conference call with him. In fact, to my knowledge and recall, I have never had a phone call with Mr. Canary.

   Reiterating, the allegations made by Ms. Simpson involving me are simply not true. While Ms. Simpson herself may not personally be in doubt, however, with no disrespect intended, I certainly believe her to be in error.

Terry Lucas Butts

SWORN TO and subscribed before me this 19th day of October, 2007.

Notary Public

My Commission Expires:

NANCY D. LOWE NOTARY PUBLIC MACON COUNTY, N. C. My Comm. Exp. 1/27/2011

STATE OF ALABAMA)

JEFFERSON COUNTY)

AFFIDAVIT OF MATTHEW H. LEMBKE

My name is Matthew H. Lembke. I am a partner in the Birmingham, Alabama office of Bradley Arant Rose & White LLP. I received my law degree from the University of Virginia School of Law in 1991. Following law school, I clerked for Judge J. Harvie Wilkinson III on the United States Court of Appeals for the Fourth Circuit and for Justice Anthony M. Kennedy on the Supreme Court of the United States. I joined Bradley Arant in 1993 and have practiced at the firm continuously since then.

In the fall of 2002, I served as counsel to the Riley for Governor campaign. The results of the 2002 Alabama gubernatorial election were very close. Bob Riley, then a congressman, won by approximately 3,000 votes over Governor Don Siegelman. I understand it to have been the closest gubernatorial election in Alabama history.

Due to the closeness of the election, Governor Siegelman initially refused to concede and asked for a recount of the ballots. What ensued was a legal controversy involving numerous state courts that extended over a 13-day period until Governor Siegelman conceded on Monday, November 18, 2002.

In my role as campaign counsel, I led the Riley campaign's efforts in that post-election legal controversy. Within a day or two of the election, the campaign also retained former Alabama Supreme Court Justice Terry Butts, who had been the Democratic nominee for Alabama Attorney General in 1998, to join me in leading the legal effort. From the time that Justice Butts joined the effort on or about November 7,

2002, until Governor Siegelman's concession, Justice Butts and I worked closely together on all the legal issues.

I have reviewed the affidavit executed by Jill Simpson with regard to certain alleged events occurring on November 18, 2002. I have also reviewed Ms. Simpson's testimony to representatives of the House Judiciary Committee on September 14, 2007.

I arrived at Rob Riley's law office around 9:00 a.m. on November 18, 2002. Justice Butts and I were physically located in Rob Riley's personal office during most of the day. Rob's personal office is a large room with a desk at one end and a sofa and conference table at the other end. Rob was also present in that office throughout the day. Justice Butts, Rob, and I worked on various legal issues throughout the morning and into the early afternoon.

In the early afternoon of November 18, we learned from Governor-elect Riley's campaign manager, Toby Roth, that a representative of Governor Siegelman had called to determine where Governor Siegelman could call Governor-elect Riley late that afternoon. For the next few hours, we sat in Rob's office waiting to see if the Siegelman call would take place.

Late that afternoon, Governor Siegelman placed the call to Governor-elect Riley and stated that he was conceding the election. Along with Justice Butts, Rob Riley, Toby Roth, and others, I listened to Governor-elect Riley's end of the conversation. When the call ended, the room erupted in celebration, and all of us left shortly thereafter to accompany Governor-elect Riley to the location where he made his victory speech.

I do not recall the phone call that Ms. Simpson claims took place between her, Justice Butts, Bill Canary, and Rob Riley at 10:52 am on November 18, 2002, for 11

minutes. I did not leave the presence of Justice Butts and Rob Riley for more than a few minutes at any point from the time I arrived at Rob's office until we left for the victory speech at the end of the day. I do not believe that I was out of Justice Butts' and Rob Riley's presence for 11 consecutive minutes at or around 10:52 a.m. that day. If there had been a conference call conducted by speaker phone in Rob's office as described by Ms. Simpson, I believe that I would have heard it. I do not recall any such call taking place while I was there. In addition, Bill Canary was not at Rob's office on November 18, 2002, nor do I recall that he participated in any conference call involving me at any point during the post-election controversy.

The notion that Governor Siegelman would have conceded the governorship because a photo existed of a Democratic operative planting Riley signs at a Ku Klux Klan rally in Scottsboro, Alabama after the election strikes me as absurd. Indeed, the first time I ever recall hearing about Riley signs at a Ku Klux Klan rally in Scottsboro, Alabama was when I read a press account of Ms. Simpson's affidavit.

I was with Justice Butts on November 18 virtually continuously from approximately 9:00 a.m. until Governor-elect Riley's victory speech, and I am unaware of him having had any meeting or phone call with Governor Siegelman or any representative of Governor Siegelman to discuss a concession.

During the post-election legal controversy, there were several lawyers around the state who served as co-counsel for the Riley campaign on various post-election legal matters. Jill Simpson was not one of those lawyers. In fact, the first time I ever recall hearing Ms. Simpson's name was when I read an account of her affidavit on the *New York Times* website.

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The gentleman's time has expired.

Do you want——

Mr. FORBES. Yes, Mr. Chairman. If the gentleman would listen to my statement, I did not say perjury. I said referred to the Department of Justice for investigation.

Mr. DAVIS. I thought it was extraordinary, Mr. Forbes, sir, your statement is contradicted by the phone records.

Mr. SCOTT. The gentleman's time has expired. If the Ranking Member wants to finish his response or make a response to the gentleman's comments——

Mr. FORBES. Mr. Chairman, I was very careful in saying that it should be referred to the Department of Justice.

And the other thing that I emphasized—the gentleman probably heard—was Ms. Simpson's not here. It would be very easy to bring Ms. Simpson here—you had the ability to call the witnesses—and have Ms. Simpson choose the kingpin, have her be in testimony, to have her be here so that we could cross-examine. She is not here.

That is my statement, I believe it is accurate, and——

Mr. SCOTT. The gentleman's time has expired.

Mr. FORBES. Thank you.

Mr. SCOTT. The Ranking Member of the Subcommittee, Mr. Cannon?

Mr. CANNON. Thank you, Mr. Chairman, and I appreciate the calm and thoughtful way you have been handling this hearing.

A couple of points that I would like to make before I ask some questions. In response to Mr. Conyers, I just would like to point out to Mr. Biskupic or Biskupic never knew that his name was on the list, and I think we have verified that through out discussions with various witnesses.

And, secondly, I would like to congratulate the gentleman from Michigan and do hope that the newspapers lead with the headline "allegations" in huge type, and then the rest of this about selective prosecution in small letters, because that is clearly the distinction that we are dealing with here.

And I want to apologize, Mr. Chairman, also. We have a markup in Resources, and I have to be over there to vote. I have been here other than the voting over there, but I did need to be gone. I am sorry.

I apologize to our witnesses for not having been here for the questioning, and I apologize if I am redundant in any way.

But, Mr. Thornburgh, I would actually like to ask you a question, a bit of a loaded question, I grant you, but do you believe that your client is innocent?

Mr. THORNBURGH. I believe that the government has the responsibility to prove his guilt beyond a reasonable doubt, and my role is to hold the government to that standard. My beliefs one way or the other are not really relevant.

Obviously, I believe that this is an unjustified prosecution based on the facts that I set forth and which involved to me the use of trivial irregularities and an attempt to escalate those into Federal felony charges. In that sense, I do believe he is innocent.

Mr. CANNON. Well, that was really quite direct. Thank you.

I note that we have television cameras here today, and it occurs to the mind it is not because of large type allegations but because

of your presence as a former Republican Attorney General. Now I recognize the fact that you have a special interest in the Department of Justice and that your concerns about the department carry a personalized and a particular view.

But it seems to me that your appearance here today does a couple of dramatic things. In the first place, it says that you believe strongly enough about this that you should appear. Don't you think that affects the nature of the case that is going forward in a way that may help your client, but may be detrimental to the department?

Mr. THORNBURGH. I would certainly hope not. I appear here today as a lawyer for an individual who has been charged with a Federal felony, serious, 84 counts of felony, and my job as a lawyer is to represent that individual as best I can and see that insofar as he is concerned, justice is accomplished.

Mr. CANNON. That is a very lawyerly statement, and I agree with it entirely as a lawyer. But you are not just a lawyer. The reason the cameras are here today are not because you are a lawyer defending a client who you may believe or whom you are just defending and trying to get the best defense possible. That is not why they are here. They are here because of your prior status. Doesn't that concern you somewhat?

Mr. THORNBURGH. Well, I do have a devotion to the Department of Justice. I served over half of my professional career in the Department of Justice in one capacity or another, and I have spoken out previously on irregularities that I think are occurring, most notably on the attempt to subvert the attorney-client privilege which has been undertaken by the department.

Mr. CANNON. And we agree on that point, by the way.

Mr. THORNBURGH. Well, that is an example——

Mr. CANNON. There are lots of issues out here.

Mr. THORNBURGH. Yeah, that is right, and one of the issues to me is the overreaching of Federal prosecutors to create Federal offenses out of trivial violations of——

Mr. CANNON. We do not disagree on much, let me just say, and, clearly, look, my biggest concern is with your role and your history and your current advocacy because you are advocating for your client.

Mr. THORNBURGH. I am, indeed. I am here——

Mr. CANNON. My problem is that the Justice Department will always have problems whatever the Administration is, and it is the job of this Committee to help keep those things on track. It is easy for that organization to go off track a little bit. It has, as you know, wonderful institutions, wonderful rules, wonderful checks and balances within the department. Those are deteriorating for many reasons, including the war on terror.

I would just in conclusion suggest that you take a step back as an advocate and recognize that our job here is not to hammer the former Attorney General, not to make a case in a narrow sense against one prosecutor or against, say, two prosecutors, which, by the way, after having been in some of these cases, they are not before us today.

The fact is we have prosecutors who, generally speaking, are doing a good job and, as a Committee, we have a responsibility to

help reinforce the good and root out the bad, and I suspect that if you reflect on this, you are going to agree that your advocacy here probably is counterproductive to your longer-term views and concerns about the department.

Mr. THORNBURGH. I would certainly hope not, but I appreciate your views on that.

Mr. SCOTT. Thank you. The gentleman's time has expired.

Did the gentleman from Georgia have a motion to make?

Mr. JOHNSON. Yes, Mr. Chairman. I request that the gentleman from Alabama, Mr. Davis, be granted 1 minute of my time.

Mr. SCOTT. Without objection, the gentleman from Alabama is recognized for 6 minutes.

Mr. DAVIS. Thank you, Mr. Chairman.

Thank you, Mr. Johnson, for yielding.

Mr. Jones, most of my questions would be to you, but I do want——

Mr. DELAHUNT. Mr. Chairman?

Mr. SCOTT. The gentleman from Massachusetts?

Mr. DELAHUNT. Yes. A parliamentary inquiry.

Mr. SCOTT. State the inquiry.

Mr. DELAHUNT. Is it appropriate at this point in time for me to move to grant to the gentleman from Alabama 4 minutes of my time?

Mr. SCOTT. Without objection, the gentleman is recognized for 10 minutes.

Mr. DAVIS. Thank you, Mr. Delahunt, for being so gracious, also.

Most of my questions, Mr. Jones, would be to you, but I want to briefly pick up on the point that I made before. There was a loss of exchange between myself and Mr. Forbes.

One of the irresolvable questions before this Committee is the veracity of the individuals who submitted these affidavits. This Committee is not a grand jury. This Committee is not a jury. So we are enormously limited and we should be limited in our capacity to determine who is being accurate and who is not. I suppose the public has to make that judgment.

But I do want to make sure that we do not turn this into a hearing in which we cast dispersions on witnesses to suggest that they have manipulated their testimony and, if that is done, it needs to be done with a factual foundation. So I turn again to the point that I made earlier.

This is a material question here. Simpson alleges that on November 18, 2002, she had a conference call with Terry Butts, former member of the Alabama Supreme Court who had become politically active; a gentleman named William Canary, political operative in Alabama whose wife was the U.S. attorney then and is still now the U.S. attorney of the Middle District of Alabama; and Rob Riley, an attorney who practices at the firm Riley Jackson, the son of the current governor.

Three affidavits submitted today by Mr. Riley, Mr. Butts, and another individual who was working for Mr. Butts, Mr. Matt Lembke. All three of these affidavits make the assertion that there was no phone call on November 18 in which they participated with Jill Simpson. Exhibit 4 to the Simpson deposition, which I have asked unanimous consent that it be introduced into the record of

these proceedings, is crystal clear on one point. If you look at the bottom of the entry, 11/18/2002, a call to Birmingham, Alabama, to 205–870–9866, for 11 minutes. If you run a search on NetOpus.net, you will find Riley & Jackson, phone number 205–870–9866.

Mr. Chairman, I believe I have asked unanimous consent that this search inquiry be admitted into the record.

So, before we make judgments about Simpson or anyone else, let those judgments not be immediately contradicted by the phone records and the unimpeachable facts.

Mr. Jones, you mentioned your representation as Don Siegelman's attorney in connection with the matters that eventually led to his indictment. I want to focus you on one timeframe. I want to focus you on the end of 2004, at least the last 6 months of 2004.

Because even with 10 minutes, my time is limited. I am going to move to the questions, and I ask you to give me quick responses.

In the end of 2005 or that last 6 months of 2004, were you in regular conversations with two prosecutors in Montgomery and the U.S. attorney's office, Mr. Feaga and Mr. Franklin?

Mr. JONES. Congressman, I attempted to be for several months after we were told we would get an answer within 30 days. I attempted to be, and it was very little conversation until ultimately the conversation on the telephone in late November, early December of 2004

Mr. DAVIS. Okay. Now, before we get to that, during the period of time when you were in communication with Mr. Feaga and Mr. Franklin, did there come a point when they made representations to you regarding the quality of their case against Mr. Siegelman?

Mr. JONES. Yes. That was in July of 2004.

Mr. DAVIS. Would you quickly tell the Committee about that conversation?

Mr. JONES. Essentially, we were told that most all of the allegations that we had been looking at previously had been written off, they were too trivial to bring with the former governor.

Mr. DAVIS. Now let me slow you down. This is important. The people who made the representation to you that most of the allegations against Don Siegelman had been written off were the two prosecutors, Mr. Feaga and Mr. Franklin. Is that right?

Mr. JONES. That is correct.

Mr. DAVIS. All right. Continue.

Mr. JONES. We were also told that they had narrowed the focus down—they had only been on the case, by the way, about 3 months—into three areas. Two of those areas which I have outlined were absolutely clear. There was no crime committed. We knew that there was nothing there. They recognized that. The issue with the——

Mr. DAVIS. And, again, I am going to slow you down. When you say "they recognized that," you are saying that Mr. Franklin and Mr. Feaga acknowledged to you that two other areas had little or no merit?

Mr. JONES. Well, I will not say they used those terms, but it was pretty obvious they were concerned about that area.

Mr. DAVIS. Okay.

Mr. JONES. The third one involved the allegation of this appointment of Richard Scrushy to the CON Board, and while Mr. Feaga did say——

Mr. DAVIS. Now let me slow you down because, again, you and I know these facts. Everybody here does not. There was an allegation that was eventually included in the indictment that Mr. Scrushy was appointed to the state certificate of need board and that there was a quid pro quo in which Scrushy agreed to contribute money to a lottery initiative the governor was sponsoring. That was one of the allegations, correct?

Mr. JONES. Correct.

Mr. DAVIS. And Mr. Feaga and Mr. Franklin indicated to you, did they not, that that was the dominant area in which they were looking as of July 2004? Is that correct?

Mr. JONES. That is correct, Congressman.

Mr. DAVIS. Did Mr. Feaga and Mr. Franklin characterize to you the quality of the evidence around that particular allegation?

Mr. JONES. The way they characterized the evidence, you know, Mr. Feaga in particular felt that the circumstantial evidence, in his view, was compelling, but as I rattled off all the defenses and all of the facts that were holes that they had in the case, which they never filled, by the way, he also acknowledged that the defenses in that case factually and legally were also compelling, and it was very troubling, and it indicated to us that if he could not fill those holes, then likely these charges would not be brought.

Mr. DAVIS. Did the lottery transaction or the alleged quid pro quo rest on the testimony of one particular cooperating defendant, Nick Bailey?

Mr. JONES. Nick Bailey solely.

Mr. DAVIS. Did Mr. Feaga indicate to you in his conversations that there were problems with the credibility of Nick Bailey?

Mr. JONES. Yes. Everyone——

Mr. DAVIS. Would you tell the Committee about that?

Mr. JONES. He knew that. Everyone knew that. Mr. Bailey had committed several crimes with Lanny Young. He had taken a couple hundred thousand dollars worth of bribes, and there was a serious gap factually in——

Mr. DAVIS. In addition to the normal kinds of impeachment, cooperating witness, the fact that Mr. Bailey admitted to numerous crimes, did Mr. Bailey or did Mr. Feaga indicate to you that at one point Mr. Bailey had changed his story regarding the transaction?

Mr. JONES. Not at that time. Not at that time, Congressman. At that time, that was the significant gap because what Mr. Bailey was telling them could not match up to the objective facts about when the check was cut, when it was delivered to Montgomery.

Mr. DAVIS. And did Mr. Feaga acknowledge that there was this gap based on Mr. Bailey's testimony?

Mr. JONES. Oh, yes, sir. Absolutely. And it was not until later when I brought that back up—and this would have been in 2005—where he said, "Well, Mr. Bailey has now essentially rethought his testimony, and that is not"——

Mr. DAVIS. All right. But as of July of 2004, did Mr. Feaga suggest to you that there were major factual gaps in Nick Bailey's testimony?

Mr. JONES. Yes, sir. That is why he wanted us to toll the statute of limitations so they could try to fill those gaps.

Mr. DAVIS. All right. What was your state of mind in July, early summer of 2004, regarding the likelihood of the U.S. attorney's office bringing a case against Don Siegelman?

Mr. JONES. All three of us—all three of the defense lawyers—felt like that case was coming to a close within the next——

Mr. DAVIS. And was that based on statements or your reading from statements that the prosecutors—Mr. Franklin, Mr. Feaga—made to you?

Mr. JONES. It was based on those statements. It was based on my 20-something years of experience, and it was based on our own investigation.

Mr. DAVIS. Did there come a point at the end of 2004 when Mr. Feaga indicated to you that he had been in communications with the Department of Justice regarding this case?

Mr. JONES. That is correct. In late November of 2004, early December, Mr. Feaga apologized for not giving us the answer he had promised earlier, but indicated there had been a meeting in Washington and that the lawyers in Washington had asked him to go back and look at the case, review the case top to bottom.

Mr. DAVIS. Did Mr. Feaga suggest to you when the communications with the lawyers in Washington had happened regarding the Siegelman case?

Mr. JONES. He did not. He just said, "We had a meeting in Washington."

Mr. DAVIS. But your interaction with Mr. Feaga was in November 2004. Is that correct?

Mr. JONES. Correct.

Mr. DAVIS. Inferring to you that the conversations happened at some point prior to November 2004?

Mr. JONES. That is correct.

Mr. DAVIS. We have had the Ranking Member introduce into the record the full transcript, the sworn transcript, of Jill Simpson's testimony of September 14. Let me refer to it.

On pages 50, 51 and 52, Ms. Simpson testifies that in early 2005, she had an exchange with an individual, Rob Riley, and that Mr. Riley made the representation to her that he had been told that Karl Rove, the President's former political adviser, had been in communication with the Office of Public Integrity and that he, Mr. Rove, had prodded the Office of Public Integrity to bring a case against Mr. Siegelman.

Certainly, all of us figured on time to review in detail what she said, but that is contained on pages 50, 51 and 52. In other words, Ms. Simpson's suggests that the timeframe of Rove's intervention happened in late 2004, Mr. Rove's intervention at the Department of Justice.

Mr. Jones, did Mr. Feaga indicated to you that he had been in communication with the Department of Justice at some point in late 2004 during the exact timeframe as Simpson alludes to?

Mr. JONES. Congressman, he not only indicated to me, but there were lawyers representing witnesses later on that he also made the same representations to. Yes.

Mr. DAVIS. Mr. Chairman, my time has expired. I will have my 5 minutes come around to me eventually, but I thank my colleagues for yielding their time to me.

Mr. SCOTT. Thank you. I think we used your 5 minutes. You had 4 from Delahunt, 1 from the gentleman from Georgia and your 5. So I think you may be getting someone else's.

Ms. LOFGREN. Mr. Chairman, I would be happy to yield a minute of my time to the gentleman.

Mr. SCOTT. Okay. Let's go at this time to the gentleman from Ohio, Mr. Jordan?

Mr. JORDAN. I thank the Chairman. I would like to yield a couple minutes to the Ranking Member on the Commercial Committee.

Mr. CANNON. Thank you. I appreciate the yielding.

And I am intrigued by the gentleman from Alabama, Mr. Davis, who, as I understand, was a prosecutor and who is now interrogating a friendly witness based upon conversations with the opposition, and I think the record should sort of reflect the fact that the testimony thus far is sort of one-sided.

I would like to suggest a couple of things here. In the first case, Mr. Feaga is a well-known prosecutor who, in fact, did prosecute Democratic Governor Siegelman, but he also prosecuted former Republican Governor Guy Hunt. This is a guy who I think is well-respected in the field. You may have some personal views about him. I do not know, Mr. Davis. But he is not a Republican hack going after Democrats. I do not think that would be fair to say.

And I would like to ask unanimous consent to introduce into the record a letter to The New York Times sent by Mr. Feaga, and I am just going to read one paragraph, and then I will yield back.

[The information referred to follows:]

-----Original Message-----
From: stevefeaga
To: letters@nytimes.com
Sent: Mon, 9 Jul 2007 11:31 am
Subject: Fwd: Your Editorial on U.S. v. Siegelman

Sirs: I am re-sending my letter which I sent you on 7 July 2007. As requested in your automated email reply I am sending the contact info you require. I tried to shorten the letter down to 150 words. The large number of mistaken assertions in the editorial made that impossible. Sincerely Steve Feaga, Assistant United States Attorney, Middle District of Alabama

Sirs:

Your recent editorial about the prosecution of Don Siegelman contains several mistaken assertions about the case. I am writing to correct a few of them.

Siegelman received both personal and campaign funds in exchange for favorable discretionary actions as Governor. Five trial witnesses testified from first-hand knowledge to the existence of an express quid pro quo agreement between Siegelman and three people who paid Siegelman in exchange for official action. Two of these witnesses testified that they had personally made agreements with Siegelman and paid him money in exchange for a promise to perform official acts. The other three witnesses testified that they were told, either by Siegelman or the also-convicted bribe payor, of the existence of the agreements. In the instances when the money paid in exchange for the promise was a campaign contribution, the evidence at trial proved that Siegelman went to extraordinary lengths, including violating Alabama's Fair Campaign Practices Act

disclosure requirements, to hide the contribution. Neither Siegelman nor his convicted co-defendant took the stand to deny any of these assertions.

The claim of Dana Jill Simpson that she participated in a telephone call allegedly establishing a White House connection to the case has been refuted publicly by all of the other alleged participants, including Terry Butts, a former justice of the Alabama Supreme Court and co-counsel for Siegelman's co-defendant at the trial. I have no way of knowing what occurred in Washington D.C., or elsewhere, when I was not present. What I do know is that no one pressured me, in any way, to pursue these charges.

The case of United States v. Siegelman was pursued and successfully prosecuted because my co-counsel and I, a grand jury, a trial jury, and a federal judge, after hearing the facts, believed that those facts established that Siegelman unlawfully sold out the best interests of the people of the State of Alabama. Any assertion to the contrary, regardless of how well or maliciously intended, is just plain wrong.

Sincerely,
Stephen P. Feaga
Assistant United States Attorney
Co-counsel in the prosecution of U.S. v. Siegelman, Scrushy, et. al.

Mr. DAVIS. If the gentleman would yield, he is actually a very fine lawyer, and I work with him. He inquired about my personal opinion, a very fine man, a very fine lawyer. I did not suggest otherwise.

Mr. CANNON. I appreciate that, especially in the context of his statement. This is a letter to the editor of The New York Times, I believe. "The case of the *United States v. Siegelman* was pursued and successfully prosecuted because my co-counsel and I, a grand jury, a trial jury and a Federal judge, after hearing the facts, believed that those facts established that Siegelman unlawfully sold out the best interests of the people in the State of Alabama. Any assertion to the contrary, regardless how well or maliciously intended, is just plain wrong. We are not a court of law. We are not a jury. We are not looking at Mr. Feaga."

And I think that he has actually come out of this particular round of this discussion pretty darn well, and the friendly witness testimony to the contrary notwithstanding, this is not about whether Mr. Siegelman should or should not be in jail. It is about the Department of Justice, and I think that what we have heard so far is not compelling that we have a problem with it or the problems we have are not being resolved by this hearing.

And I would yield back to the gentleman from Ohio, and I think that the gentleman, Mr. Forbes, would like to have time yielded to him.

Mr. JORDAN. Mr. Chairman, I would like yield the remainder of my time to Mr. Forbes.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. Jones, I just want to come back to you because, you know, the problem we have with these hearings is we get all kinds of apples and oranges and everything that is involved, and I know that you did not get to be in the trial with Governor Siegelman. That was your testimony.

Mr. JONES. Correct. That is correct.

Mr. FORBES. But Governor Siegelman did go to trial. Isn't that true?

Mr. JONES. He did.

Mr. FORBES. And he had, I am sure, talented and competent attorneys who you would worked with before, and you do not lay any claim that they were not competent or did not do a good job at the trial, did you?

Mr. JONES. You know they are sitting right behind me, and I would not dare say that. [Laughter.]

Mr. FORBES. They would beat you. They would hit you with a chair by then.

Mr. JONES. No. You are right.

Mr. FORBES. And all they were able to ask whatever questions they want under the appropriate rules of procedure for the court to the witnesses that were testifying at that trial, weren't they?

Mr. JONES. I am assuming that is true.

Mr. FORBES. And at the end of all of that trial, not the short little tidbits that we have here today, but at the end of the trial, a full Federal trial, a jury found Governor Siegelman guilty. Is that correct?

Mr. JONES. That is correct.

Mr. FORBES. And I am sure there were motions made after that to the Federal judge to find something that the jury did wrong, and the judge said no and he sentenced Governor Siegelman based on that trial. Is that accurate?

Mr. JONES. That is correct.

Mr. FORBES. And now that is up on appeal, and we trust judges to look at that. In fact, the Chairman of this Committee made a statement the other day when he came in to national security issues. If you trust judges, you do not have any problem with this act. We trust them for national security issues, but we do not trust them on these kind of legal procedures.

And, basically, Mr. Thornburgh raised the question about the appearance of impropriety, and then we emphasize allegations. But here is what happens. The cycle repeats itself over and over again. You make allegations. You bring witnesses in who make statements sometimes without facts because it is something they have read in the paper or they have heard or they have seen. The prosecutors cannot even come in here and refute it because they feel ethically that would be improper to do.

Then you make the allegations long enough and loud enough, people begin believing and taking those allegations as fact, and then, all of a sudden, you have an appearance of impropriety which leads to the erosion of public confidence. We come in here and repeat the cycle over and say, "Why does it happen?"

Mr. Shields, I hope I will get a few more minutes with you, but I only have a couple seconds now.

You do not have a law degree, do you?

Mr. SHIELDS. No.

Mr. JONES. And you do not have a degree in statistics, do you?

Mr. SHIELDS. I have taken a number of statistics courses.

Mr. SCOTT. Will the gentleman use the microphone, please?

Mr. JONES. But you have taken some courses, right?

Mr. SHIELDS. I have taken about 18 hours worth, yes.

Mr. JONES. Okay. And in just the couple of seconds I have left, why did you not limit the data in your study to either actual indictments or convictions instead of just the ones that were reported in newspapers?

Mr. SHIELDS. Well, because I am a communication professor, and I am interested in communications.

Mr. JONES. That is right. You are a communication professor, and you are not looking at statistics of what actually happened. You are looking at the communications. But isn't it true—or maybe you do not know this, not having a law degree or a statistics degree—but a lot of investigations by prosecutors are never made public, are they?

Mr. SHIELDS. No, but they are just as damaging when they are made public, as if they had prosecuted.

Mr. JONES. I am sorry?

Mr. SHIELDS. As if they had indicted——

Mr. JONES. No, no. When you are looking at the investigations, there are a lot of investigations that take place that are not reported in newspapers. Isn't that true?

Mr. SHIELDS. Well, I have found——

Mr. JONES. But you do not know that. You are not a lawyer.

Mr. SHIELDS. I am not a lawyer, but I have found a number of investigations were reported in the newspaper.

Mr. JONES. I see, but you do not know about the ones that were not reported in the newspapers.

Mr. SHIELDS. No.

Mr. JONES. Okay. Thank you.

Mr. SHIELDS. The DOJ will not give us that information.

Mr. JONES. That is right.

I yield back.

Mr. SCOTT. The gentleman from North Carolina, Mr. Watt?

Mr. WATT. Thank you, Mr. Chairman.

Professor Shields, I am struck by one particular section of your testimony that I want to read into the record and get you to elaborate on.

Your hypothesis was that party affiliations of the officials and candidates investigated would match the normative data. I am reading from page 4 of your testimony. However, the sample includes 631, 76.95 percent, investigations of Democrats and 142, 17.32 percent, investigations of Republicans, and 47, 5.73 percent, investigations of Independents or other officeholders or candidates.

And then you say this, which I want to make sure that nobody misses, "The disparity in the proportions of the actual sample between investigations and-or indictments of Democrats in relation to Republicans is again statistically significant beyond the .0001 level and could have occurred by chance less than one in 1,000 samples.

Mr. SHIELDS. Yes, that is 10,000.

Mr. WATT. One in 10,000 samples. Does that mean, Professor, that all else, everything else being equal, the chances of no political partisanship being taken into consideration in this grouping of prosecutions, charges, investigations, is less than one in 10,000?

Mr. SHIELDS. It is pretty significant data, yes. That is the point. Less than one in 10,000 chances of this data being in error when you do the chi-square statistic.

Mr. WATT. Okay. And so if you just did a regular statistical analysis, the chances that something other than sheer chance was taken into account?

Mr. SHIELDS. That is correct. That is correct.

Mr. WATT. It is less than one in 10,000.

Mr. SHIELDS. Yes.

Mr. WATT. Okay. That is what I wanted to be clear on.

With that, I will yield the balance of my time to the gentleman from Alabama.

Mr. DAVIS. Thank you, Mr. Watt.

Mr. Jones, let me return to you, and let us pick up the timeframe that we previously talked about after Mr. Feaga represented to you that the Department of Justice wanted a review of this case. As you move into the 2005 calendar year, did there seem to be a change in the tenor and the tone of the investigation that you noted?

Mr. JONES. A hundred and eighty degrees opposite.

Mr. DAVIS. Would you tell us about it?

Mr. JONES. Every month with the grand jury, we saw new witnesses coming forward. Everything was back off the table. The Federal role was, I think, greater. It was very public, and it was very

intense. It was not a review literally as a review. It was as if the case started all over again.

Mr. DAVIS. Did it appear that the U.S. attorney's office had ceded a significant amount of the day-in, day-out responsibility in this case to the Department of Justice?

Mr. JONES. Well, the FBI were doing the day to day, and Mr. Feaga was conducting most of that grand jury, as I understand it.

Mr. DAVIS. Does the name Noel Hillman register to you?

Mr. JONES. Yes. He was head of the public integrity section at the time.

Mr. DAVIS. Did Mr. Hillman at some point move from public integrity to become a United States district judge?

Mr. JONES. He did.

Mr. DAVIS. And was it shortly after the period of time in which he would have been the Office of Public Integrity to go from Public Integrity to the U.S. district judgeship?

Mr. JONES. That is correct. That is correct.

Mr. DAVIS. Let me refer to the opening statement that you have submitted to the Committee today. I want you to elaborate on this sentence. You talk about how the tenor and tone of the investigation changed, and there appeared to be a systematic effort to gather any negative evidence on Mr. Siegelman.

This is what you say, "Targeting individuals rather than crimes taints that entire process," referring to the system of justice, "and gives investigators and prosecutors an ends-justify-the-means license to abuse the public's trust."

Mr. Jones, would you elaborate on what you mean by that sentence?

Mr. JONES. Certainly, that is exactly what appeared to have happened here. There were allegations that had surfaced that had been written off, but then, all of a sudden, there was this much wider net that we were seeing that included every financial contributor, every investment that Don Siegelman had made, every check that his wife had written. This was—my public statements reflect it—an investigation about an individual, and that is just something that we cannot tolerate in this country, to investigate individuals. It does give prosecutors—and investigators as well—licenses to change, to twist, to cajole testimony.

Mr. DAVIS. Mr. Thornburgh, would you comment on that?

Mr. THORNBURGH. I think that the responsibility of prosecutors at every level of government is simply to follow the evidence wherever it leads, and oftentimes it leads to people in high public office, and they should not hesitate to prosecute those persons. But it is all evidence based and not based on any targeting process.

Mr. SCOTT. The gentleman's time has expired.

The gentlelady from Ohio, do you have a motion?

Ms. SUTTON. Thank you, Mr. Chairman.

I ask unanimous consent to yield my 5 minutes to the gentleman, Mr. Davis.

Mr. FORBES. Mr. Chairman, I have no problem with her yielding her 5 minutes when it is time for her to go, if that is okay.

Mr. SCOTT. Without objection, her time is yielded to the gentleman from Alabama and will be used when her time would have come up.

Ms. SUTTON. Thank you, Mr. Chairman.

Mr. SCOTT. The gentleman from Texas, Mr. Gohmert?

Mr. GOHMERT. Thank you, Mr. Chairman.

And I appreciate the witnesses being here.

As a former judge, former prosecutor, former chief justice, I am always curious as to how people arrive at conclusions, and so I am curious about a number of things.

First of all, I really do not know the answer. Do you know how many Democratic Party members are elected officeholders in the United States? Any one of you?

Mr. SHIELDS. The total number of elected officials in the United States is estimated at slightly over 500,000, and so it would be about 50 percent of that.

Mr. GOHMERT. And where does that information come from?

Mr. SHIELDS. The total number of elected officers, I think, comes from the Department of Commerce, and the 50 percent information comes from the Eagleton Institute of Rutgers University.

Mr. GOHMERT. The Eagleton Institute?

Mr. SHIELDS. Yes.

Mr. GOHMERT. Okay. And do you know how recent that 50 percent figure was obtained and how it was obtained?

Mr. SHIELDS. Yes. I obtained it when I started the study, and it is as recent as 2002.

Mr. GOHMERT. Okay. All right. So it does not take into account, well, I guess the last 5 years then. And that is interesting that it is 50-50, and it is——

Mr. SHIELDS. No, it is 50, 41 and 9.

Mr. GOHMERT. Oh, 50——

Mr. SHIELDS. Forty-one Republican and 9 Independent-Other.

Mr. GOHMERT. Oh, okay. So there are many more Democratic Party member officeholders than there are Republicans.

Mr. SHIELDS. Well, there is 9 percent more.

Mr. GOHMERT. Okay. All right. Okay. And by your study, have you ruled out the possibility completely that perhaps there are more Democratic Party member officeholders who have violated the law than there are Republicans who have violated it?

Mr. SHIELDS. Well——

Mr. GOHMERT. Do you just take that as a given or——

Mr. SHIELDS. No, Mr. Gohmert. That is a legitimate question, and that is why I had the control group with nonfederal law enforcement from the state and county, the city prosecutorial level as reported in the study. There were 251 individuals in that, and there the investigations reflected 50 percent Democrat, 41 percent Republican and 9 percent Independent/Other, which, across the Nation, meant that it exactly matched the percentages of elected officeholders. So——

Mr. GOHMERT. Okay. So——

Mr. SHIELDS [continuing]. That there was no political bias at the state and local level, and the question then became: Why is there at the Federal level?

Mr. GOHMERT. Okay. So you would take a city or take 251. How did you arrive at those 251?

Mr. SHIELDS. Selected them from newspaper accounts and television accounts using Google searches.

Mr. GOHMERT. Right. But you are saying that was your control group. I find it interesting, though, when you try to extrapolate numbers across the country because we know from some of our Committee hearings, for example, there are six murders per 100,000 people in New York, there were 50 murders per 100,000 in New Orleans before Katrina. I think our last hearing said there were 90 murders. So there are different rates of crime around the county depending on what is being prosecuted and which crimes are actually being looked at.

But I am so intrigued. When I was looking at your study and some of the results because this is my third year here in Congress, and the whole time here, I have heard now Speaker Pelosi and other leaders in the Congress talk about repeatedly Republican culture of corruption, Republican culture of corruption, Republican culture of corruption, and I had no idea there were more Democrats corrupt than there were Republicans, according to the prosecutions that were going on. So that was quite enlightening.

Mr. SHIELDS. I suspect that is because she was talking about her colleagues in the House and the colleagues in the Senate.

Mr. GOHMERT. Well, that is an interesting issue, too, because if you read the 80-page affidavit getting a search warrant to go into William Jefferson's office, and if you took the things in there that were sworn to be true as true, then I do not know why he was not prosecuted prior to the 2006 election. It looks like it was a laydown case if they could prove the things they swore were true in that affidavit.

Yet the prosecution, as I understand it, demanded that a month before the election, he enter the plea if there were going to be any agreement. Otherwise, the agreement was off, which sure looks like politics, kind of like when Caspar Weinberger was indicted in June before the election in 1992 which had an effect on the election, just like Bob Ney's situation did, too. So I see why it was——

Mr. SHIELDS. Mr. Gohmert——

Mr. GOHMERT [continuing]. Enlightening to know that there are more Democrats in trouble than there are Republicans, and I am pleased to know that I will be able to use your study helpfully——

Mr. SHIELDS. There are 17 percent in the sample. I would say that sometimes——

Mr. GOHMERT. Oh, so you are saying that that is——

Mr. SHIELDS. No, it is not.

Mr. GOHMERT [continuing]. Not a big deal?

Mr. SHIELDS. The issue you raise of timing of when the investigations occur is very important no matter whether it is a Republican or whether it is a Democrat.

Mr. GOHMERT. Sure it is.

Mr. SHIELDS. I am not here to defend one or the other. I do not like either one of them when they occur, and there is no doubt, I think, that this Justice Department also investigated some liberal Republicans that did not quite pass their litmus test, and I think that is probably reflected in the data, too.

Mr. SCOTT. The gentleman's time has expired.

Mr. GOHMERT. I would yield back, but I do not have anything to yield.

Mr. SCOTT. The gentleman from Georgia, Mr. Johnson, for 4 minutes?

Mr. JOHNSON. Thank you, Mr. Chairman.

Perhaps the most significant statement about the dangers of political interference with prosecutorial judgments was made by then Attorney General and later Supreme Court Justice Robert H. Jackson who stated that, "With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone.

"In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it. It is a question of picking the man and then searching the law books or putting the investigators to work to pin some offense on him.

"It is in this realm in which the prosecutor picks someone whom he dislikes or desires to embarrass or selects some group or unpopular person and then looks for an offense that the greatest danger of abuse of prosecuting power lies."

And having said that, I would like to point out that along with concerns about Governor Siegelman and George Wilson being investigated because of pressure from the White House and from Karl Rove, there are concerns about the prosecution of Georgia State Senator Charles Walker.

Senator Walker has a case that is on appeal. His lawyers, Dershowitz, Eiger & Adelson, in an October 22, 2007, letter, which appears in our packet, have asked the Committee to take a look at this case, and I just want to talk about the case.

Senator Walker was one of the Georgia's most prominent Black politicians, a former state senator who had served in a legislature for 20 years. He made history in 1996 by being elected as senate majority leader in Georgia, making him the first African-American to become a senate leader in the country. His efforts in changing the state flag and beating the current governor for the position of senate majority leader has led many to believe that those events led to his downfall.

During the current governor's campaign for governor—and he switched from the Democratic Party to the Republican Party—the current governor vowed to create an inspector general's office to investigate corruption and cronyism. To drive the point home, he not only traveled to Senator Walker's hometown of Augusta to introduce this initiative, he held a press conference in front of one of Senator Walker's businesses.

Concurrently, the Georgia Republican leadership openly pressed the U.S. attorney to go after prominent Democrats, a fact that was confirmed through a subsequent investigation by the Justice Department. The current governor won the election.

Walker was defeated in his bid for re-election, and it was later revealed that the U.S. attorney, Richard Thompson, was carrying out a political agenda with respect to some of his investigations on Walker and others. The Office of Professional Responsibility investigation within the Department of Justice found that Thompson was guilty of a number of politically motivated ethical lapses, including his duty to refrain from making public comments on ongoing investigations, his duty to refrain from participating in a matter that directly affected the interest of a personal friend, that is,

the governor, and political ally and, three, his duty to refrain from taking action that would interfere with or affect an election.

The investigation concluded that U.S. Attorney Thompson abused his authority and violated the public trust for the purposes of benefiting a personal and political ally. Thompson later resigned his office as U.S. attorney in disgrace.

The investigation of the former officials were dropped, but the investigation of Senator Walker continued. Thompson's successor, Lisa Godby Wood, continued the investigation which resulted in an indictment filed against Walker on 142 counts of mail fraud, tax fraud and conspiracy, including numerous counts related to his service as a member of the Georgia Assembly.

Several questions with respect to Senator Walker's trial had been raised from the integrity of the judge presiding to the selection of the jury. The judge, U.S. District Court Judge Dudley Bowen, whose nomination Senator Walker had opposed due to allegations that the judge was a member of private clubs which excluded Blacks, had close ties to the Augusta newspaper which was the principal competitor of Senator Walker's newspaper business, and the jury pool was expanded from the largely minority district of Augusta, Georgia, to the outlying areas outlining the city which is predominantly White which resulted in an expanded jury pool.

This issue has ignited a lot of attention. Senator Walker's case is on appeal.

And I will yield back the remainder of my time.

Thank you.

Mr. SCOTT. Thank you.

The gentleman from California, Mr. Lungren, who is a former attorney general?

Mr. LUNGREN. Thank you very much, Mr. Chairman.

And I thank the witnesses for appearing.

The quote from Justice Jackson was, in fact, an important quote for all of us to consider, particularly the part where he says, "It is in this realm where the prosecutor picks some person whom he dislikes or desires to embarrass or selects some group or unpopular person and then looks for an offense that the greatest danger of abuse of prosecuting power lies.

"It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group being attached to the wrong political views or being personally obnoxious to or in the way of the prosecutor himself."

And I do think that is an admonition against prosecutors. I would also think it is an admonition against Members of Congress in the way we conduct ourselves from time to time, that it is a tremendous temptation to try and find some particular item that we can to discredit someone.

Having said that, Mr. Attorney General Thornburgh, I just want to say that I have great respect for you. I can recall when you were Attorney General and you had a meeting with Members of my side of the aisle, including a number of Members of this panel, some 20 years ago at which time a Member of this Committee was under investigation by your department—and I think you came about that close to reading him his Miranda rights during the meeting

we had—and the only reason I mention that is I understand the difficulty when we have law enforcement with a discretion that is given to them through the Constitution and the proper appointment by the President, in your instance, and the political interplay that takes place with respect to public policy issues.

I take very seriously claims of selective prosecution, but I also recall being, as attorney general of California, accused of selective prosecution whether you brought a case or you did not bring a case whenever there was some political element involved, and I understand how serious and difficult it is for you to make such claims in this case, although there are a series of questions that were asked you, and I wish I could get into them, but I do not have enough time.

I would like to direct some questions to Mr. Jones.

On the record, I will just say Don Siegelman's a friend of mine. He served as Attorney General when I was attorney general. I got to know him and his wife and his family, and while I would oppose selective prosecution of any individual, I would particularly take offense on someone I know and someone I served with and, during the time I served with him, found to be a credible and responsible person.

So the allegations that are alleged here are very serious, in my estimation, and so I just want to get a feel from you about the prosecutor in the case, the person who actually prosecuted the case and the acting U.S. attorney.

When I received a call from Governor Siegelman's wife on this, I started to make a little bit of an inquiry myself, and one of the things I received in response to my inquiry was the statement from Louis Franklin on this matter in which he said, "I can, however, state with absolutely certainty that the entire story is misleading because Karl Rove had no role whatsoever in bringing about the investigation or prosecution of former Governor Don Siegelman. It is intellectually dishonest to even suggest that Mr. Rove influenced or had any input into the decision to investigate or prosecute Don Siegelman. That decision was made by me, Louis F. Franklin, Sr., as the acting U.S. attorney in the case in conjunction with the Department of Justice's public integrity section and the Alabama attorney general's office."

Now that is a pretty strong statement on his part. I was thinking of cases I had in which it turned out when we prosecuted someone, it was someone of a high profile of the other party, who there was a contention might be a rival of mine in a future race, and, frankly, all I could say in response was, "I did not do it for that purpose. I took into account prosecutors."

I remember having a number of meetings with my career prosecutors about the quantum of evidence that was there, making them go over and over with me that quantum of evidence to convince me that this was a solid case, and so I guess I am trying to ask what is it that would have you convince me that this statement is erroneous and that Mr. Franklin and the prosecutor in the specific case brought a case in which they did not believe, did it only for political purposes?

And the reason I ask that is this—and, again, I come out of the construct of my own experience—in California, the attorney general

has supervisory responsibility for all D.A.'s offices. When I was attorney general, I could take over any D.A.'s office. I could not intervene to stop a prosecution, however. I could only intervene to take over a prosecution or start one that the D.A. had refused to do, and the thinking was that if a prosecution that should have been brought was not brought, there is no recourse for the public.

But if there is a prosecution that is questionable and ought not to be brought, the prosecutions are with, in the first case, the grand jury, the judge, the appellate court and finally the Supreme Court, and that was sort of the framework of California law, and I thought it was a fairly reasonable approach to look at things. So, when I hear a serious allegation from someone I consider to be a friend that there has been selective prosecution, and I look at the case, I would just ask you to help me on that, please.

Mr. JONES. It is a very fair question. Let me make sure you understand. I have never ever said that Louis Franklin or Steve Feaga were politically motivated. In fact, I do believe that by the time this indictment was rendered, they were invested in the case and they believed it. I publically said that before.

I do not believe, however, though, that Mr. Franklin can make any statement anymore than I can about whether or not Karl Rove or anyone else at the White House discussed with the public integrity section whether or not to go forward against Don Siegelman.

All I know is that Mr. Feaga and Mr. Franklin did not think a lot of this case, based on my experience and what they said, in the summer of 2004. We were told by Mr. Feaga that he was asked to go back by the public integrity section and, in fact, that that is what happened.

So, unlike maybe looking at U.S. attorneys, I have never thought necessarily that Mr. Feaga or Mr. Franklin were motivated by any political motive there.

Mr. LUNGREN. That goes to the question. When I was dealing with some very difficult cases, I told my prosecutors and investigators to go back and look at it, in one case when there did not appear to be sufficient evidence, but we had accusations and in another case where I did not think they had sufficient evidence, and that is the normal course of a supervisor, and that is why I am trying to find what is different here, if you could tell me so I could figure out what is different.

Mr. JONES. Congressman, my reaction was in part the same at the time. But when you look at the entire timeline and you look at the fact that the indictment against Governor Siegelman had been dismissed, and then when you look at what actually happened in 2005, which was not just simply a review.

Remember this case had been going on for 2, 2½ years, and the allegations were there. This was more than a review. This was going back and starting to look at areas that had never been looked at before and that, in fact, so many businessmen and others that were subpoenaed had to spend time and money with allegations or at least looking at areas that never came to fruition. It was a whole new investigation, and that is all I can say.

But I do appreciate your comments because, at the time, my reaction was one of the same. It would not be unusual. I was con-

cerned because of the dismissal, though, previously that they all of a sudden come back.

Mr. SCOTT. The gentleman's time has expired.

The gentleman from Massachusetts is recognized for his one remaining minute?

Mr. DELAHUNT. I think it is important that we understand that this is an important hearing because it does focus on the integrity of the decision-making process of the prosecutor.

I would like to put aside partisan considerations, irrelevant of whether it is a Democrat or a Republican, but I think we have to know and have confidence if we are to reassure the American people that the mechanisms, the checks and balances that ensure the integrity of that decision-making process are working, that they are effective.

The Ranking Member mentioned the Nifong matter. The state took action there. He said we ought to be looking at the Duke Lacrosse case. Well, they did. They did that.

I think the issue is: Is OPR properly functioning? I do not know the answer to that question.

I also want to comment on Attorney General Thornburgh's observation about the criminalization of ordinances and county codes, et cetera. Do we really want to do this? Is this what we intended when we passed these substantive laws? This is something that this Committee, Republican and Democrat, has to take a hard look at.

Mr. SCOTT. Thank you.

The gentlelady from California is recognized for 5 minutes?

Ms. WATERS. Mr. Chairman, thank you.

Mr. SCOTT. Wait, wait. Excuse me. Ms. Lofgren. I am sorry.

Ms. LOFGREN. Mr. Chairman, thank you for recognizing me.

First, I have a letter that has been delivered to us by Timothy Hawks, the lawyer for Ms. Thompson who was convicted and whose conviction was overturned and, in response, I would ask unanimous consent to put that in the record.

Mr. SCOTT. Without objection, so ordered.

[The information referred to follows:]

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October 10, 2007

Honorable John Conyers, Jr., Chair
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Re: The Politicized "Honest Services" Prosecution of a State Employee *U.S. v. Thompson*, case no. 06-CR-20 (Eastern District of Wisconsin) Appeal no. 06-3576 (Seventh Circuit Court of Appeals)

Dear Chairman Conyers:

I am writing on behalf of my client AFT-Wisconsin (AFT-W) and its affiliate unions which represent, among others, approximately 6,500 employees of the State of Wisconsin. AFT-W members are employed in a broad, cross-section of professional positions. Their job responsibilities require them regularly to exercise their professional judgment to decide questions involving large sums of money and affecting fundamental rights of citizens. The highly politicized federal prosecution and conviction of Georgia Thompson for mail and wire fraud based on her alleged deprivation of the public and the State of her "honest services," in violation of 18 U.S.C. §§1341 and 1346, potentially imposes a profound risk of criminal prosecution on AFT-W members in the routine exercise of their duties and responsibilities.

Georgia Thompson was a State procurement section chief, which is a civil service position. In 2005, she presided over a committee selecting a State travel agent to fulfill the needs of about forty percent of the State's annual travel budget. The government prosecuted Ms. Thompson because two executives of the travel agency which was selected each had donated $10,000 to the re-election campaign of the Democratic Governor. The government's unsupported theory was that Ms. Thompson influenced the travel contract selection of the Governor's benefactors to gain political advantage for her supervisors and to ensure her own job security. A jury found that Ms. Thompson

had criminally steered the travel contract to the winning agency, using a State administratively-sanctioned procedure seeking the "best and final offer" from the competing applicants for the state contract. Although the winning agency was the low bidder for the State's contract, members of the selection committee had preferentially rated other competitors and Ms. Thompson invoked the process to award the contract to the low bidder.

According to the Seventh Circuit Court of Appeals, which reversed the conviction, there was no *quid pro quo* involved and there was not "so much as a whiff of a kickback or any similar impropriety" in the contract choice. Further, there was no dispute that Georgia Thompson had no knowledge about the travel agents' donations to the Governor, which had been properly disclosed and reported. Three months after the decision to award the State travel contract, Ms. Thompson received a meager $1,000 raise through normal civil-service processes. The prosecuting U.S. Attorney Steven Biskupic portrayed this raise as Ms. Thompson's "private gain" from having criminally skewed the contract award to the Governor's political donor.

As characterized by the Court of Appeals, the government based its prosecution of Ms. Thompson on the theory that "any public employee's knowing deviation from state procurement rules is a federal felony, no matter why the employee chose to bend the rules, as long as the employee gains in the process." Immediately after the Court heard oral argument, it reversed the conviction and Ms. Thompson's 18-month sentence and ordered her released from federal prison. A panel of three Court of Appeals judges issued a blistering opinion that highlighted the paucity of evidence against Ms. Thompson and the shaky basis of the prosecution. *United States v. Thompson*, 484 F.3d 877 (7th Cir. 2007). At oral argument, one judge announced that the government's "evidence is beyond thin." In its opinion, the Court assailed the prosecution:

> The prosecutor's theory, which the jury accepted, is that Thompson deprived Wisconsin of her "honest services" - that is, of her duty to implement state law the way the administrative code laid it down, with only 300 of 1,000 points apportioned according to price, while 200 points were available to the best-looking or most mellifluous oral presenter, even if Thompson deemed that allocation silly or counterproductive.
>
> [T]hat approach has the potential to turn violations of state rules into federal crimes. When the Supreme Court reverses a court of appeals, it is apt to say (as the prosecutor says about Thompson) that public officials have failed to implement the law correctly. Does it follow that judges who are reversed have deprived the United States of their honest services and thus committed mail fraud?

United States v. Thompson, 484 F.3d at 882.

Like Georgia Thompson, State employees represented by AFT-W daily perform a myriad of official functions, including the administration and oversight of State government benefits, funds, licenses, as well as oversight of private business in which the public has an interest. Their work can unknowingly benefit political friends of their supervisors and eventually result in their advancement or a raise for their job well done.

The AFT-W affiliate Wisconsin Professional Employees Council, Local 4848 (WPEC) represents approximately 4,750 members employed by various state agencies in professional fiscal and staff services, such as procurement specialists, accountants, auditors, financial examiners, revenue agents, tax specialists, licensing examiners and program coordinators. WPEC member real estate specialists in the State Department of Transportation acquire and condemn real property and make property value assessments of such properties. Procurement specialists and purchasing agents, who are employed by a number of State agencies, may typically award many state contracts involving less than $25,000, based on a simplified bidding process. They may execute contracts for larger amounts without using a Request for Proposal process. In those circumstances, procurement specialists and purchasing agents exercise their discretion and professional judgment in recommending such contract awards.

The more than 1,500 members of Wisconsin Science Professionals, Local 3732 (WSP) are employed by the State of Wisconsin in occupations related to fishery, forestry, wildlife, and parks. WSP member hydrogeologists, toxicologists, biologists, water resource management specialists, waste water specialists, air management specialists, and others prepare environmental impact statements. These statements are important factors in the granting of various state permits for construction and development on lands and waterways within the State. Waste management specialists employed by the Department of Natural Resources, the Department of Transportation, and the Department of Agriculture, Trade & Consumer Protection award consulting contracts through three-person committees. These contracts govern repairs to contaminated land and are valued up to $250,000.

Many other classifications of employees represented by AFT-W affiliates exercise their independent judgment and discretion in ways that have significant economic impact on citizens and businesses involved in various activities within the State of Wisconsin. For example, chemists employed by the Department of Natural Resources are responsible for laboratory certification or registration and effectively issue business licenses. Revenue field auditors assess taxes owed by entities and have discretion to reach agreement on tax issues for amounts not exceeding $50,000 in tax per issue.

Financial examiners audit the records of insurance companies and make decisions whether capital rations, reserves and liquidity are sufficient to insure the companies' solvency. Financial examiners employed by the Department of Financial Institutions exercise their professional judgment to audit state-licensed banks and credit unions to insure that losses and uncollected credits are properly reported and that banks maintain a proper ratio between capital savings and capital borrowed. Consumer credit examiners process licenses, conduct examinations and handle consumer complaints regarding state-licensed, financial services companies. State public defenders negotiate plea deals for indigent clients who may have some relation, familial or otherwise, with political donors.

The experience of Georgia Thompson poses unique and limitless risks for these and other state employees. State employees, like employees in the private sector, have legitimate and weighty interests in their job security and in the satisfaction of their supervisors. The government's theory of Ms. Thompson's federal criminal liability, predicated on an employee's actions "intended to cause political advantage for her supervisors" and "help her job security," potentially impugns with criminal scienter an employee's routine, discretionary actions whenever those actions cause significant public benefits, resources, or funds to redound to a political donor or supporter of the employee's superior. The sole fact that an affected party is a political donor to an employee's superior should never by itself create any inference that the employee denied the public and the state her honest services. Such prosecution has a chilling effect on the daily work of State government due to legitimate employee fears that the routine performance of their duties may subject them to prosecutorial scrutiny and potential criminal liability.

Further, the Thompson prosecution under wire and mail fraud subverts a constitutional doctrine that provides immunity to public officials. Such immunity is designed precisely to protect their ability to exercise their professional judgment in discretionary acts.

In addition, the context of the prosecution of Ms. Thompson was a dangerous mix of partisan electoral politics. Following Ms. Thompson's release after four months in federal prison, the New York Times editorialized that U.S. Attorney Biskupic had "turned a flimsy case into a campaign issue that nearly helped Republicans win a pivotal governor's race." Biskupic brought Ms. Thompson to trial in his jurisdiction in the Eastern District of Wisconsin (Milwaukee), although Ms. Thompson lived and worked in state government in the Western District (Madison). In the fall of 2005, Biskupic publicly announced his ongoing investigation of Ms. Thompson, who was indicted in January 2006. The trial began that summer and Ms. Thompson was

sentenced in September, before the gubernatorial election in November. The local press reports that, during that time, the Republican party spent millions of dollars on advertising portraying Ms. Thompson as a symbol of corruption in the administration of the incumbent Democratic governor.

Ms. Thompson's excruciating experience highlights the need for reform of the federal wire and mail fraud statutes to clarify and narrow the elements of the crime of honest services mail fraud. To defend herself and her good name, Ms. Thompson spent approximately $360,000, exhausting her life savings, losing her job and losing her home. Law-abiding state employees whose daily work and decision-making potentially puts them at the same risk should not work in fear that they too will become political pawns in high-stakes federal, criminal prosecutions serving dubious prosecutorial goals. The Seventh Circuit addressed the need for law reform:

> This prosecution, which led to the conviction and imprisonment of a civil servant for conduct that, as far as this record shows, was designed to pursue the public interest as the employee understood it, may well induce Congress to take another look at the wisdom of enacting ambulatory criminal prohibitions. Haziness designed to avoid loopholes through which bad persons can wriggle can impose high costs on people the statute was not designed to catch.

U.S. v. Thompson, 484 F.3d at 884.

Please enter this statement into the record of the forthcoming Committee hearing on this matter. Thank you for the opportunity to address this matter on behalf of the Wisconsin State employee members of the AFT-Wisconsin. As an advocate for over 6,500 professional state employees, AFT-W seeks to ensure that state employees can perform their jobs and engage in the lawful exercise of their professional judgment without fear of ambiguous, politically-motivated federal criminal prosecution.

Very truly yours,

HAWKS QUINDEL EHLKE & PERRY, S.C.

By

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Ms. LOFGREN. And I just want to raise that issue because when we started out on this inquiry, I will confess, I thought we were going to find some ineptness and some bungling. I never really believed that we would uncover something that looked very seriously wrong and people who, because they were going to risk their job, brought prosecutions that should not have been brought.

And then, of course, that brings us to the question: What about the people who did not lose their jobs? What did they do?

And the case of Ms. Thompson is a pretty stark one. I mean, as this letter indicates, the Republican Party sent millions of dollars advertising Ms. Thompson as a symbol of corruption of the incumbent Democratic regime, but when her case was heard on appeal, the appellate court, the Seventh Circuit, described the government's evidence as, "beyond thin," and described the legal theories of the prosecution as "preposterous," and the very day of oral arguments ordered that she be released from custody.

So my question, Mr. Attorney General and Mr. Jones, are you familiar with another case where the appellate court on the day of the oral arguments orders the appellant released with this kind of description of the prosecution?

Mr. THORNBURGH. Pretty unusual, I must say.

Mr. JONES. I think it would be extremely unusual.

Ms. LOFGREN. Well, it just seems to me it looks not right, and I would hope—first, let me say, Mr. Attorney General, that politically we are not aligned, but I do respect your integrity and you are what we always thought of on my side of the aisle as an honest conservative and that you would stay here today and speak as you have in an effort to really, I think, save the country from a souring and a corruption of the prosecution process is really in keeping with your reputation as an honest conservative, and I appreciate it. It cannot be easy to do. I appreciate that you have done this.

And I hope that all of us in the Congress will get a grip. It is time to stop defending the indefensible and time to clean up something that appears to have seriously damaged the integrity of the judicial system, which is core to our free society.

And with that, Mr. Chairman, I would like to yield the balance of my time to the gentleman from Alabama, Mr. Artur Davis.

Mr. DAVIS. Thank you, Ms. Lofgren.

Let me turn to another aspect of this case that has raised questions and ask unanimous consent to introduce a Time magazine article, October 4 of this year, called Selective Justice in Alabama.

Lanny Young, Mr. Jones, you will recall, in addition to Nick Bailey, was the government's other principal witness against Don Siegelman. Mr. Young indicated that he had bribed Siegelman and a number of Siegelman staffers for a number of years.

According to the *Time* magazine article, which relies on FBI 302s, documents turned over to defense lawyers, in May of 2002, Mr. Young met with the U.S. attorney's office, met with individuals from the Attorney General's office and made a series of allegations against Republican officeholders, one of them, one of the senators from my state, another one, the former Attorney General who is now a Federal judge.

He indicated that he had laundered campaign contributions for them illegally. He indicated that he had made contributions in vio-

lation of Federal campaign finance laws. Quote from the story, "Several people involved in the Siegelman case who spoke to Time say prosecutors were so focused on going after Siegelman that they showed almost no interest in tracking down what Young said about apparently illegal contributions to Sessions, Pryor, other well-known figures in the Alabama GOP, and even a few of the safe Democrats."

In other words, no matter what Lanny Young said, the only thing that the government wanted to hear about was that which related to Don Siegelman. Quote from the story, "It just did not seem like that was ever going to happen," that being an investigation of the others, "said an individual present during key parts of the investigation. Sessions and Pryor were on the home team."

One of two things happens here, it seems to me. Either the government did not even look into the allegations against these other individuals, which raises an obvious question of selectiveness, or more likely this, they concluded very quickly that Lanny Young was a liar who could not be trusted, and that what he said about our senator and our Attorney General had no corroboration, no proof.

I will direct this question to Mr. Thornburgh and Mr. Jones as a former Attorney General and a former U.S. attorney. Does the government not have ethical obligations to not put someone on the stand who appears to be a noncredible witness?

And, Mr. Thornburgh, would you be troubled if the government brought a case based on someone who had made allegations that appeared to conclusively be disproved?

Mr. SCOTT. Can I ask the witnesses to respond briefly? The gentleman's time has expired.

Mr. THORNBURGH. Yes.

Mr. JONES. Yes.

Mr. SCOTT. The gentleman from Tennessee?

Mr. COHEN. Thank you, Mr. Chairman.

I am concerned about these cases that have been raised, pretty much so, but I would like to turn our discussion to a case in Mississippi that Chairman Scott mentioned in his opening statement, a case that raises serious questions of selective prosecutions.

The Committee has received letters from Mississippi Supreme Court Justice Oliver Diaz, as well as Mississippi trial lawyer Paul Minor and Mississippi attorney and former judge John Whitfield, detailing the facts of their prosecutions in Mississippi. They all believe these have been politically motivated. And it is mentioned in Justice Diaz's letter that John Grisham, a distinguished author, former member of the Mississippi House of Representatives, has written a lot about Mississippi in fiction. It looks like something that is even more scary. It looks like a tale of intrigue, of political incest in the highest orders and places of the Mississippi Justice Department, and attempts to get even with folks on the other side of the aisle.

I would like first to ask unanimous consent that the three letters that we have received from the justice, the attorney and the former judge be included in the record.

Mr. SCOTT. Without objection.

[The information referred to follows:]

October 22, 2007

House Judiciary Committee

Dear Committee Members:

I am writing to you because you are the only people who can help me prove that the Bush Justice Department's prosecution of me and Justice Oliver Diaz, Jr., and Judges Wes Teel and John Whitfield was politically motivated. I believe we were selectively prosecuted because of my political affiliation with and contributions to the Mississippi and National Democratic parties. In order to explain to you why I believe that we were the subject of selective prosecution as part of what now appears to have been a nation-wide conspiracy by the Bush Justice Department to dry up funding for Democratic candidates, I must first give you some background of our case.[1]

Prior to my prosecution, I was a successful attorney on the Mississippi Gulf coast specializing in mass tort litigation, including asbestos cases, cases against Bridgestone-Firestone, Ford Motor Company, and probably most notably, lawsuits against the major tobacco companies.[2] For example, the tobacco litigation generated more than $70 million dollars in fees for my law firm. I was active in both the Mississippi and American Trial Lawyers Associations. Because my father, Bill Minor, was a journalist and civil rights activist, I was brought up to take the plight of the disenfranchised and politically oppressed seriously. As a result of my father's influence as a role model, I became actively involved in politics and was cofounder and chairman of the board of the South Mississippi Legal Services Association for years until it was disbanded in 2002 under the Bush, Jr. administration.

From 1996-2003, I gave more than a half-million dollars to Democratic candidates both locally and nationally, including a substantial sum to John Edwards so that he could run for president.

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[1] Roger Shuler, a journalist from Alabama, has for the last month or so written over forty articles giving a factual and legal account of my case. He sets forth the history and the bizarre legal rulings of the judge in considerable detail. Anyone who is interested in the case can read Mr. Shuler's analysis on line at his Internet blog, the *Legal Schnauzer*. In addition to providing an excellent analysis of my case, Mr. Shuler has also written articles on former Gov. Don Siegelman's case, Georgia Thompson's case, and the cases of others whom the Bush Justice Department may have selectively prosecuted. Mr. Shuler is an extraordinary example of the unpaid citizen journalist who now exists on the Internet. I cannot thank him enough for taking the time to interest himself in my case to the extent of reading the thousands of pages of transcripts and spending the time to research and analyze on his own the confusing legal issues of my case.

[2] Roger Shuler notes that both Don Siegelman and I have a "fascinating connection which involves a history of taking on the tobacco industry and coming out on top." *Legal Schnauzer*, "Siegelman, Minor, and Tobacco," October 2, 2007. **Index 16**.

As a result of the success of the mass tort litigation in Mississippi, in 2000 the U.S. Chamber of Commerce made a decision to target members of the Mississippi Supreme Court who were perceived to be anti-business and to elect judges who favored tort reform. In an unprecedented move,[3] the Chamber spent more than one million dollars supporting four pro-business judicial candidates all the while attempting to disguise the source of its funds. The *Wall Street Journal's* Jim VandeHei described the Chamber's tactic in an article entitled"Political Cover: Major Business Lobby Wins Back Its Clout By Dispensing Favors~~:~~ Some Members Can Hide Behind Chamber's Name to Pursue Private Ends~~T~~argeting 'Unfriendly' Judges', *Wall Street Journal,* September 11, 2001, p. A1. The Chamber solicited major corporate funders who had been plagued by class-action suits, tort liability and other high damage legal awards, and asked them to fund an elections effort to defeat attorneys general and judges viewed as pro trial lawyer. The Chamber would cloak the identities of the corporations and would do its best to keep its own involvement from the public. Public Citizen, Tom Donohue U.S. Chamber of Commerce President Oversees Renegade Corporations While Pushing for Limits to Corporate Accountability, Feb. 2005. *See also,* Scott Horton,"A Minor Injustice", *Harper's Magazine,* October 3, 2007, **Index 4**.

A particular target of the Chamber was Justice Oliver Diaz, Jr., a Supreme Court Justice who had been appointed by Democratic governor Ronnie Musgrove to fill a vacancy on the Court. Ads paid for by the Chamber began to appear attacking Diaz for taking more than $100,000 in trial lawyer donations. Diaz's opponent, Keith Starrett, with the help of pro-business interests and the Chamber, outspent Diaz by more than $500,000, making the 2000 judicial election by far the most expensive in Mississippi history at that time. Diaz beat Starrett; however, by the end of the campaign, he was deeply in debt. I played an active role in raising money to help Diaz retire his campaign debt, including signing the loan guarantee which became the subject of my later prosecution and that of Justice Diaz by the DOJ.

At this point, it might help to understand that until 2003 about half of Mississippi's Democratic Party money came from trial lawyers. For example, in the 1999 gubernatorial campaign, Mississippi trial lawyers donated as much to the Democratic candidate Ronnie Musgrove's campaign as did the Democratic National Committee. Of the $379,500 donated by the trial lawyers, $112,000 of which came from me.

In 2001, President Bush appointed Dunn Lampton to be the United States Attorney for the Southern District of Mississippi. Lampton had previously run twice for Congress as a Republican, but had not been elected. Lampton had been financed in the races by companies which I had successfully sued, including companies owned or run by Lampton's family. In addition, Lampton had supported Starrett in his unsuccessful bid to unseat Justice Diaz. Lampton himself had pled guilty to violations of FEC rules on disclosure and reporting.

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[3] Prior to that time, judicial races in Mississippi had gathered almost no attention or monetary contributions.

In October of 2002, just in time for another judicial election, news leaked to the press that I, other trial lawyers, judges and Justice Diaz, were being investigated by the FBI and Lampton's office for campaign finance violations. Trial lawyers became afraid to contribute, and candidates were afraid to take their money. As one writer put it,"Trial-lawyer money had become radioactive."Mencimer, Stephanie, *Blocking the Courthouse Door,* Free Press 2006, p. 109 (**Index 2**). Pro-business interests were able to seat six pro-business candidates on the Mississippi Supreme Court.

On July 25, 2003, ninety days before the gubernatorial election, I was indicted with Justice Diaz and two Gulf coast lower court judges, Wes Teel, and John Whitfield, on conspiracy, racketeering, honest services mail fraud and deprivation of honest charges stemming from loan guarantees I had made to Justice Diaz and the other two judges. Loan guarantees are not required under Mississippi law to be reported on any disclosure form.

Dunn Lampton played an active role in presenting the case to the grand jury. The indictment was signed by Noel Hillman, the then head of the Public Integrity Division, the same Noel Hillman, who signed the Siegelman-Scrushy indictment. The indictment came just in time to be used in the 2003 gubernatorial campaign to unseat Democrat Ronnie Musgrove in favor of Republican Haley Barbour, the former Chairman of the National Republic Party, and a successful lobbyist on behalf of the tobacco industry the very industry which was now having to pay billions of dollars because of the lawsuit which I and other trial lawyers had been involved in. As we all now know, Hillman was rewarded by President Bush for his public service by a seat on the federal bench. Approval for the investigation was given by then head of the DOJ criminal division, Michael Chertoff, who was first rewarded by Bush with a seat on the Court of Appeals and now serves as Secretary of the Department of Homeland Security.

My campaign contributions to Ronnie Musgrove and the fact that the government had indicted me for"bribing"judges was the subject of television commercials and full page full color ads which were widely distributed on behalf of Republican candidate Haley Barbour in the 2003 gubernatorial campaign. (**Index 52**). In November of 2003, Barbour was elected governor, and early in 2004, one of his first acts as governor was to call a special session of the Mississippi legislature which passed legislation effectively wiping out mass tort litigation and capping noneconomic and punitive damages in almost all tort cases.

As a result of the 2003 indictment, Justice Diaz was suspended from the Mississippi Supreme Court while his federal charges were pending, leaving that Court with a 6-2 pro-business majority. The disappearance of trial lawyer money seriously crippled the Mississippi Democratic Party. In the 2003-2004 election cycle, the Mississippi Democratic Party raised only $450,000; whereas, the Republican State Party raised $4 million.

In early 2005, in a trial lasting three months, Justice Diaz was acquitted of all charges. I was also acquitted on the six charges involving Justice Diaz. The jury failed to reach a

verdict on other charges against me and against the other two judges. The indictment's allegations that I guaranteed a loan to Justice Diaz in order to gain an unfair advantage from him were ludicrous from the outset. As the government was well aware, Justice Diaz recused himself from every case handled by my firm. The only case which Justice Diaz sat on which even remotely involved me was one involving my father who had been sued for libel in his capacity as a journalist by a racist ex-Highway patrolman who had been paid a half-million dollars by Republic operatives to investigate Bill Clinton in the now discredited Whitewater investigation. I did not represent my father. The Mississippi Supreme Court in an 8-0 opinion, joined in by Diaz, affirmed the trial court's dismissal of that case. *See,* Roger Shuler, "Mississippi Churning, Part IX," *Legal Schnauzer,* September 26, 2007 (**Index 22**).

As soon as the verdict came down exonerating Justice Diaz, Lampton unsealed a new indictment against Diaz and his wife for tax evasion. Rather than run the risk of having both her husband and herself in jail thereby depriving their children of both parents, Mrs. Diaz pled guilty to tax evasion in return for a sentence of probation. In 2006, Justice Diaz was acquitted of tax evasion and finally was able to return to the Mississippi Supreme Court. By indicting Justice Diaz on frivolous charges, the Chamber of Commerce was able to accomplish what it had not been able to do through the electoral process--a duly elected Supreme Court Justice was effectively unable to sit on the Court for three years while those charges were pending against him. Scott Horton in *Harper's* suggests that the purpose of prosecuting Diaz was to keep him off the bench "shifting the Mississippi Court's partisan balance. Seen this way, what the Justice Department did was an assault on the political franchise of Mississippi voters and an attack on the State's Constitution, all pursued for partisan political purposes." Scott Horton, *Harper's Magazine,* "A Minor Injustice: Why Paul Minor?" October 5, 2007 (**Index 5**).

In the spring of 2007, the other two judges and I were retried. This time all three of us were convicted. I was sentenced to serve 11 years and to pay fines and restitution in excess of 4.25 million dollars. The fines, incidentally, were 15 times what the federal sentencing guidelines called for.

It is important to understand that in Mississippi at the time I made the loan guarantees to the judges, it was not against the law in Mississippi for lawyers to do so. Moreover, it was common practice for attorneys to make loan guarantees to judges and to appear before judges to whom they had made political contributions. In fact, one such attorney who did so was Richard "Dicky" Scruggs, who is the brother in law of Republican Senator Trent Lott, who at the time was the Senate Majority leader in Congress. Interestingly, Lampton hired Trent Lott's Assistant Chief of staff as his own chief of staff thereby giving Lott, and possibly the White House, access to the investigation and prosecution.

In addition, at the beginning of the investigation into my campaign finance activities, special FBI Agent Matthew Campbell, a forensic accountancy expert, was in charge of the investigation. When he questioned why Scruggs was not also being investigated, he was removed from the investigation and transferred to Guantanamo Bay. *See,* Scott

Horton,"A Minor Injustice: Why Paul Minor?" *Harper's Magazine*, Oct. 5, 2007 (**Index 5**).

Special Agent Kevin Rust was placed in charge of the investigation despite his personal contributions to Keith Starrett's failed judicial campaign against Justice Diaz. Scott Horton of *Harper's Magazine* reports that under the FBI's own ethical restrictions, Rust's conflict of interest should have disqualified him from the investigation. Instead, however, he led it. The *Biloxi Sun Herald* quoted Trent Lott as acknowledging that he had had discussions with prosecutors involved in Scrugg's case. Later, however, he claimed that his comments were a "mistake." Scott Horton,"A Minor Injustice: Why Paul Minor?" *Harper's Magazine*, Oct. 5, 2007 (**Index 5**).

In any event, Scruggs was not prosecuted although he did the same thing which I was convicted of. Scruggs, however, had contributed $250,000 to the Bush-Cheney presidential campaign and GOP in 2002. The Federal Election Commission Report of September 14, 2000, shows that Scruggs and his wife gave over $500,000 to various Republican causes. Scruggs also guaranteed a $500,000.00 loan to Republican Lieutenant Goveernor Amy Tuck. Tuck was a leader in the effort for tort reform. Scott Horton,"A Minor Injustice: Why Paul Minor?" *Harper's Magazine*, Oct. 5, 2007 (**Index 5**).

In other words, when the Republican led Justice Department looks at my contributions to Democrats, they see fraud. When they look at Scruggs' donations to Republicans, they see no crime at all. Scruggs' immunity from prosecution might be explained if he had been offered some form of amnesty by the government for his cooperation in the investigation against Minor, but Scruggs and the U.S. Attorney's office denied Scruggs received favorable treatment in return for cooperation. Scruggs, in a moment of truth, at the trial denied he needed it. ~

Moreover, former Chief Justice Ed Pittman, who was a sitting Mississippi Supreme Court justice in 2000 was the beneficiary of a loan guarantee from me. Justice Pittman, was not indicted, but Justice Diaz was. Justice Pittman, however, was pro-tort reform. Justice Diaz was perceived by the Bush Justice Department as anti-tort reform (**Index 19**).

Roger Shuler, in the *Legal Schnauzer, "Mississippi Churning, Part XII,"* October 1, 2007 (**Index 19**), that double standards seem to apply to Supreme Court Justices who are conservative and advocates of tort-reform. He cites a case where Archie Wayne Courtney won a $1.8 million dollar judgment from a bank. The Mississippi Supreme Court reduced the award to a mere $45,000.00. The opinion was authored by conservative, tort-reform advocate Chief Justice James Smith. Courtney's attorney filed a motion for rehearing after learning that Smith's campaign committed had borrowed $55,000.00 from a bank that was part of the same chain Courtney had successfully sued. For some inexplicable reason, the Bush Justice Department sees fraud regarding Justice Diaz and me although he did not sit on my cases, but does not see it in the case of Justice Smith although he not only sat on the case, but actually authored the opinion. Shuler also points to another case where two

Supreme Court Justices sat on a case even though the opposing party had made political contributions to their campaigns (**Index 19**).

Over the past few months, it has become increasingly clear that Karl Rove, political strategist for Bush and other Republicans, conceived a strategy to dry up political money to Democratic candidates which included using the Justice Department as an instrument to prosecute prominent Democrats, particularly trial lawyers.[4] What this Committee must ask itself in the pursuit of truth is can it be coincidence that nearly every major attorney donor to John Edwards' campaign has been prosecuted by the Bush Justice Department? *See,* Richard Opel & Glen Justice, "Developing the Strategies' Fund Raising." *New York Times,* July 26, 2005. The *Times* points out that I was the tenth largest donor to Edwards with donations totaling $129,000 and that almost every major attorney contributor to Edwards has been the target of an aggressive DOJ investigation. In my case, in January of 2003, 30 FBI agents raided my law office under the pretext of obtaining documents regarding the judicial investigation and seized all of my documents and financial records regarding contributions and fund raising efforts on behalf of the state and national Democratic Party—in particular those regarding John Edwards. As a result, my family and I have been threatened with an indictment for campaign finance violations.

Can it be coincidence that the prosecutions of other Democrats, including Don Siegelman, former governor of Alabama, and Georgia Thompson, an innocent Wisconsin public servant, were timed to coincide with hotly contested political campaigns in violation of the Justice Departments own internal operating guidelines which require the department to avoid such an appearance of impropriety? Adam Cohen of *The New York Times,* notes the timing of the prosecutions in an editorial dated October 11, 2007, and suggests that the charges against Gov. Siegelman, Georgia Thompson, and me may have been "attempts to use the Justice Department to get Republican governors elected." (**Index 1**).

Can it be coincidence that United States Attorneys who had given loyal and honest public service to this country were fired in what has now been disclosed as a concerted plot to rid the Justice Department of people who were not "loyal Bushies" and that that plot was orchestrated again by Karl Rove and came directly from the White House?

Questions such as this are being asked all over this country by the press and honest citizens of this country are deeply distressed by the notion that the government could engage in selective political prosecutions of its citizens. This Committee, and only this Committee, can obtain answers to these questions which need to be answered in order to restore faith to those citizens that their government will not stand for such behavior by its public servants whether they are United States Attorneys or the President of the United States and his highest advisors.

I was convicted on vague charges that I obtained an "unfair advantage" from the two judges who sat on two cases years after I made the loan guarantees. I should note that during the

[4] *See,* Schuler, "All Roads Lead to Rove," **Index 42.**

interval, my firm could have brought hundreds of cases before those very same judges but did not. From the outset, the U.S. Attorney's office announced that it did not intend to prove that there was a "quid pro quo" involved because of the guarantees. This is so despite the Justice Department's own guidelines which dictate that it be able to do so before bringing such charges against lawyers and judges. Scott Horton in an article entitled "A Minor Injustice: Why Paul Minor?" published in *Harper's,* October 5, 2007 (**Index 5**), points out that "[s]everal public integrity prosecutors with whom I conferred told me they [the charges] were unfamiliar of any similar case raising charges quite like these. They were called 'strange,' and 'perhaps unique' in failing to allege a 'quid pro quo.'" Horton points out that Adam Liptak of the *New York Times* observed on March 15, 2004: "The central charge against the two men is so convoluted that setting it out requires a diagram . . . ."

In fact, the jury in our case was instructed that the government need not show a "quid pro quo" in order to convict. In other words, the government was not required to show that the judges were "bribed." Astonishingly, the jury was told that "You may find specific criminal intent even though you may find that the rulings were legal and correct, that the official conduct would have been done anyway, that the official conduct sought to be influenced was lawful and required by law, and that the official conduct was desirable or beneficial to the public welfare," as quoted in Roger Shuler, "Mississippi Churning, Part VI," *Legal Schnauzer,* September 20, 2007 (**Index 28**).

In the first trial, the trial judge allowed us to present evidence showing that the rulings made by Judges Teel and Whitfield in the two cases were grounded in the law and thee facts. However, in the second trial, the rules had changed, and we were not allowed to show that the results of the two cases were legally justified and that the suits were meritorious. *See,* Roger Shuler. "Mississippi Churning," Parts VII and VIII, *Legal Schnauzer*, September 24 and 25, 2007 (**Indices 24 and 23**) for an analysis of why the rulings by Teel and Whitfield were correct.

Furthermore, I was not allowed to show, as I had been in the first trial, that over the years I had made loans or guaranteed loans to other people, including lawyer friends, so that making the loan guarantees to my friends was not unusual or done corruptly. In short, from the first trial to the second trial, the trial judge had changed the rules dramatically to our detriment.[5]

One might well wonder why the dramatic turn around by the judge. Horton in his October 5, 2007, *Harper's* article describes the judge's conduct as "aberrational." (**Index 5**). I contend that the explanation of the judge's strange rulings may lie in the fact that while the second trial was pending, the Bush White House was considering whom to appoint to the Fifth Circuit Court of Appeals from the State of Mississippi and that Judge Henry T. Wingate, the trial judge in our case, was a likely candidate for that appointment. By now, it is no secret that only "loyal Bushies" needed to apply for political appointments of any kind.

[5] Roger Shuler's blog, the *Legal Schnauzer,* discusses the rulings in some detail.

Judge Wingate, is the first and only Black judge appointed to the federal bench from Mississippi. He was appointed by a Republican President. At the time of the second trial, the Bush White House was under attack by civil rights groups and others for nominating several white candidates from Mississippi for judgeships on the Fifth Circuit. Those persons had experienced confirmation difficulty. During the second trial, there was considerable pressure to appoint a Black from Mississippi for a judgeship on the Fifth Circuit. In short, Judge Wingate had considerable incentive to curry favor with the Bush White House during the second trial proceedings. For whatever reason, the judge's rulings were of considerable assistance to the government in our prosecution.

For example, I filed several motions alleging selective prosecution and requesting that the United States Attorney's office be recused from the case because of U.S. Attorney Dunn Lampton's involvement in securing the indictment against me[6] and in prosecuting the case. I had sued Lampton's family's companies successfully obtaining large monetary awards against them and in addition, had helped finance Justice Diaz's judicial campaign against Lampton's good friend Keith Starrett. Despite, clear precedent requiring Lampton's office to recuse themselves from my case, Judge Wingate refused to rule on the recusal motions. Furthermore, he refused to rule on my motions alleging selective prosecution because of my political activities and refused to allow my trial attorneys access to government which might have proved my claim of selective prosecution. In short, unless this Committee helps me, and the other defendants similarly situated, gain access to the files, in all likelihood we may never be able to prove what happened to us.

Please help us. If the Justice Department has done nothing wrong and our prosecutions were not directed improperly by political operatives in the White House, then why is the Department so reluctant to give Congress the information it seeks? If the prosecutions were the result of political persecution, then the country as well as the defendants need to know so that this wrong can be righted. Help us please to find the truth.

1969, I volunteered to fight in Vietnam and was awarded the Bronze Star for my service. I love my country, and I have faith that its good people and the institutions of its government will in the end win out over those who have sought to destroy our justice system if the truth can be revealed.

Sincerely yours,
s/Paul S. Minor

Paul S. Minor
c/o Julie Ann Epps
504 E. Peace Street
Canton, MS 39046
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[6] Despite Lampton's conflicts, the grand jury transcripts reflect that Lampton presented the case to the grand jury.

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OLIVER E. DIAZ, JR.
PRESIDING JUSTICE

October 22, 2007

Honorable John Conyers
Chairman of the House Judiciary Committee
United States House of Representatives
2426 Rayburn Building
Washington, DC 20515

Honorable Lamar S. Smith
Ranking Member House Judiciary Committee
United States House of Representatives
2184 Rayburn Building
Washington, DC 20515

Dear Chairman Conyers and Congressman Smith,

My friend, John Grisham, has made a comfortable living telling tales of political and legal intrigue set in our home state of Mississippi. However, the story I am about to tell does not spring from the fertile mind of a fiction writer. Instead, it is all too real, and I am afraid was hatched by politically corrupt employees in the United States Department of Justice and elsewhere. I fully understand the gravity and ramifications of the charges I have leveled and do not do so lightly, but have done so upon sober reflection and forethought. Thank you for allowing me this opportunity to tell my incredible story and to share the facts that form the basis of this saga.

As a Supreme Court Justice for the state of Mississippi, I have devoted my legal career to the fair and impartial administration of justice. It is my sincere belief that our system of jurisprudence has

been the standard of justice for all others to emulate. Five years ago I would never have believed that I would be saying the things I am about to say. However, my perspective in this matter comes from having been indicted, tried, and fully acquitted, not once, but twice. And my prosecution was led by a U. S. Attorney who had a personal and political interest in seeing to it that my co-defendants and I were convicted.

BACKGROUND FACTS

Strangely enough, I think that the best place to begin my story is at the end of my first trial. After hearing a jury fully acquit me of a multi-count bribery and mail fraud indictment, the United States Attorney for the Southern District of Mississippi, Dunnica Lampton, amazingly admitted "I knew we would have a problem on [prosecuting] Diaz because he didn't vote on anything." In other words, in order to put the best face on an embarrassing courtroom defeat, the United States Attorney admitted to all watching that he never really had much of a case against me from the beginning. He was admitting that there was never anything to his bribery allegations because I had never participated in a case in which the attorney accused of bribing me was involved. At the end of a three and a half year investigation and having just gone through a three month trial in which I faced ninety-five years in federal prison and millions of dollars in fines, I was stunned. After all, this is the point I had been making for years, and yet the prosecution and the trial proceedings continued. Despite this admission, the generous mood of the U.S. Attorney did not last. Three days later he unsealed another indictment against me.

So, how did I get to the point of being the first Supreme Court Justice in the state of Mississippi to be indicted? In 1987, I was elected as a Republican to serve in the Mississippi State House of Representatives from my hometown of Biloxi. I frequently worked across party lines with many groups and began to get a great deal of support from the Democrats I served with and with many Democratic leaning groups. In 1994 I ran for a judicial post on the Mississippi Court of Appeals and won. Judges in Mississippi are non-partisan and since that time I have not been associated with any political party.

The beginnings of this case can be traced back to March of 2000 when I was serving as a judge on the Mississippi Court of Appeals. When a death created a vacancy on the Mississippi Supreme Court, I was appointed by Governor Ronnie Musgrove (D) to serve out the remainder of that term and to stand for election in November of that year. I agreed, knowing the difficulty presented by serving on the Court and putting together a campaign in a very short period of time. However, I knew that I could rely upon past supporters such as trial lawyers, labor unions and others who had previously worked with me and were familiar with my record. One person I knew that I could rely upon was my old friend Paul Minor who was always active in his financial and moral support of Democratic causes and candidates. But, what we did not know at the time was that the 2000 election for the Mississippi Supreme Court would be like no other judicial election in the history of Mississippi.

My opponent in the election was a trial judge by the name of Keith Starrett. Starrett is from southwest Mississippi and was a long time friend of Dunnica Lampton. Lampton actually hired

Starrett as an associate prosecutor and the two worked together until Starrett left for the trial bench. Lampton also left the prosecutor's office in 2000 and unsuccessfully ran for Congress as a Republican.

The 2000 election for the Mississippi Supreme Court quickly became a heated one. While judicial elections in Mississippi are non-partisan, I was supported by Democratic leaning groups and Starrett was supported by Republicans. The election proceeded as expected until two weeks prior to election day. At that time, millions of dollars in unreported outside money came pouring into Mississippi. The United States Chamber of Commerce launched a surprise attack to assist candidates they had endorsed and to defeat others. I was targeted for defeat and became the subject of a massive negative advertising campaign. At the same time, Starrett benefitted from positive advertising supporting his candidacy. The advertising campaign included television, radio, direct mail, and telephone calls.

The Chamber refused to comply with Mississippi campaign finance laws by revealing the source of the contributions. Mississippi state election officials actually went to court to force compliance with state law. Injunctions were issued to prohibit the illegal Chamber ads. The Chamber sought an emergency appeal with United States Supreme Court justice Antonin Scalia, who in an unusual single Justice order, vacated the injunctions and allowed the Chamber ads to run. The Chamber went to Scalia without even presenting the matter to any lower appellate court, instead going directly to the United States Supreme Court.

Because of this ruling, and in order to compete with the Chamber, I needed to raise a great deal of

money in a very short period of time. I immediately turned to my loyal supporters who suggested that the quickest way to raise that kind of money would be through a bank loan. Richard "Dickie" Scruggs and Paul Minor each agreed to guarantee bank loans so that my campaign could remain competitive. Minor guaranteed a loan for $73,000 and Scruggs guaranteed a loan for $80,000. This infusion of cash allowed me to respond to the overwhelming Chamber advertising campaign. Because of these loans I was able to maintain my lead and win the election.

After his loss, Starrett returned to the trial bench. However, Lampton who was unsuccessful in his congressional race was out of a job. But that did not last long. A few weeks later, George W. Bush nominated Lampton for United States Attorney for the Southern District of Mississippi. Months later Bush nominated Starrett to serve as a federal district court judge.

The bank loans were paid off a year after the election. Scruggs paid off the $80,000 loan himself. Minor successfully sought donations from others to help pay off the $73,000 loan. All debts from the 2000 election were paid.

Minor continued his support of Democratic candidates and causes. In 2002 he was listed as one of the ten largest contributors to John Edwards. Scruggs on the other hand contributed $500,000 to Bush-Cheney and the Republican Party. It was sometime during 2002 when federal investigators began looking into the financial records of Paul Minor. Federal agents showed up at The People's Bank of Biloxi where Minor banked, demanding to see all of his financial records.

Shortly thereafter, media reports began to appear locally that a federal investigation was underway and it was looking into loans to judges that were guaranteed by Paul Minor at The People's Bank. It was reported that a federal grand jury had been convened and that it was investigating corruption in the Mississippi judiciary.

In October 2002 rumors were flying and many were concerned about the scope of the investigation. At this time, it was reported that the United States Senator from Mississippi, Trent Lott, stated that he had called federal investigators and was assured that his family members were not subjects of the investigation. Lott happens to be the brother-in-law of Richard "Dickie" Scruggs. The fact that Lott would feel comfortable enough to call federal investigators and inquire about an on-going investigation is an amazing admission. When questioned about this later, Lott denied that it had occurred.

Despite numerous conflicts and the appearance of a partisan investigation, the grand jury proceedings continued and on July 25, 2003 an indictment was handed down. It was trumpeted in a press conference called by Lampton. Indicted were Paul Minor, Oliver Diaz, Jennifer Diaz, John Whitfield and Walter W. "Wes" Teel. Jennifer Diaz is the wife of Oliver Diaz and Whitfield and Teel were state court trial judges who had also received campaign loans guaranteed by Minor. The charges were bribery and mail fraud related to campaign loans guaranteed by Minor to the judges. Minor was also charged with racketeering.

The defendants appeared in federal court and entered pleas of "not guilty." The case was assigned

to federal district judge Henry Wingate and various pretrial motions were filed. Among the motions filed were motions to dismiss for selective prosecution and for the recusal of Lampton. Wingate promised quick rulings on these motions but over a year and a half passed without any word from the judge. It was only on the eve of trial that Wingate denied the motions without written order.

Jury selection for the trial finally began in March of 2005. A jury was seated and the trial began in May. The trial continued through the summer and in August 2005 the jury returned a verdict. I was fully acquitted and Minor was partially acquitted. The jury could not reach a verdict on the remaining charges.

Our celebration did not last long. Three days later, Lampton unsealed another indictment against me, this time for tax evasion. He also announced that he would retry the remaining defendants.

I was tried again in April of 2006 and was again fully acquitted. The remaining defendants were retried in March of 2007 and were convicted. Minor was sentenced to eleven years in federal prison and fined nearly $4,000,000 in fines. This fine is more than fifteen times the amount recommended in the Federal Sentencing Guidelines. Whitfield was sentenced to nine years in federal prison. Teel was sentenced to five years in federal prison. Jennifer Diaz was coerced into pleading guilty to one count of tax evasion and was sentenced to two years of supervised probation. I have returned to my position on the Mississippi Supreme Court.

THE IRREGULARITIES

Given this background, which is troubling enough, I will now point out the facts that bring this case outside the realm of an ordinary federal criminal prosecution and into the realm of a prosecution based upon improper political considerations and for purely partisan motives.

The seminal question that must be asked is why did an investigation into the finances of Paul Minor even begin? Further, why would the federal government spend millions of dollars and dedicate extraordinary investigative resources focused on Minor? Remember, this is not a case where a crime was committed and investigators were dispatched to solve the crime. This is not even a case where a complaint was filed and investigators began looking into possible wrongdoing. Instead, this is a case where federal prosecutors decided to look into the financial activities of a specific citizen in an attempt to see if those transactions could be construed as a federal offense.

In 2002, Paul Minor was one of the ten largest donors to the campaign of John Edwards. Also, Minor was the largest single donor to Democratic candidates in the entire state of Mississippi. Media reports have indicated that during this time period federal investigators began looking into the financial dealings of major donors to the John Edwards campaign. It is precisely this time period when federal investigators entered the People's Bank of Biloxi, Mississippi and demanded to see the banking records of Paul Minor. For this reason alone, this investigation was suspect from the beginning and could be deemed a purely political witch hunt into the financial dealings of a major Democratic party donor. However, the irregularities do not end here.

To head up the Mississippi investigation, the partisans in the Department of Justice looked to the

U.S. Attorney in south Mississippi, Dunnica Lampton. Now, Lampton was no stranger to partisan Republican party politics, having twice run as the Republican nominee for the Fourth Congressional District of Mississippi, and having been twice defeated. Lampton lost the 2000 election to Ronnie Shows, who was financially supported by Paul Minor. During this election, Lampton received financial support from traditional Republican donors including lobbyist Haley Barbour, who represented Lorillard Tobacco, Brown & Williamson, and the Loews Corporation. All corporations successfully sued by Minor in the national tobacco litigation.

However, Lampton's familiarity with Paul Minor is not only political it is also personal. Ergon, Inc. Is a Mississippi corporation that is ranked on the Forbes list of 500 top private corporations in the United States. Ergon is a family owned business and is owned by the Lampton family of Mississippi. As an attorney representing injured people, Minor has successfully sued the Lampton family business, Ergon, and has recovered millions of dollars in damages on behalf of his clients. In fact, in July 2002, about the time this investigation began, Paul Minor entered an appearance on behalf of his clients against Ergon. The suit was later settled for several million dollars. This fact alone presents a serious conflict of interest for Lampton.

If this were not enough, Minor also supported me in my campaign for the Mississippi Supreme Court. I ruled against Lampton in several cases while serving as a judge on the Mississippi Court of Appeals. See First Southwest Corp. v. Dudley F. Lampton, among others. I was opposed by Keith Starrett, a family friend and former assistant of Lampton's. Starrett's secretary is Donna Lampton, a close relative of Dunnica Lampton. Due in large part to the last minute financial

assistance of Minor, I won. Lampton then used this election support as the basis for his federal indictment against me and Minor. He appointed FBI Special Agent Kevin Rust to lead the investigation. Amazingly, Rust was a financial contributor to the campaign of Keith Starrett in his contest against me. Another major conflict, and evidence of the political nature of this prosecution.

But, what about the charges in this case? One could argue that even if this case was begun for political reasons and even if the case proceeded because of a biased prosecutor, if a federal crime was committed then no harm has been done. Therefore, an analysis of this case is not complete until we look at the specific charges.

On July 25, 2002, a federal grand jury returned an indictment against Minor, myself and three others. The indictment stems from bank loans guaranteed by Paul Minor for me and two other judges. The indictment alleges that because Minor guaranteed campaign loans and eventually paid off these loans, the federal crime of bribery had occurred. Additional counts of mail fraud were alleged because of the paperwork associated with the filing and reporting of these loans. Minor was charged with the additional count of racketeering, a charge usually reserved for organized crime.

The defendants all pled "not guilty" and filed various motions challenging the indictment, alleging the political nature of the prosecution and setting forth the many conflicts of interest in this case. The prosecutors did not reply to these charges but instead responded by seeking a superceding indictment adding charges of extortion to Minor and me. The defendants requested a hearing on the motions but that request was denied and the motions were summarily dismissed on the eve of trial.

The prosecution has not to this day been required to answer any of these charges.

And so, the question now becomes, is it illegal for an attorney to guarantee loans to the election campaigns of judges in Mississippi? Based upon these indictments you would think that would be the case, but the answer is that it is not. It is perfectly legal for attorneys to contribute to the political campaigns of judges. In Mississippi, judges are elected by popular vote. Judges are allowed to receive campaign contributions from attorneys who practice before them. Until recently, there were no limits on the amount of contributions to judicial campaigns. And, there is no prohibition on attorneys guaranteeing loans to judicial campaigns.

However, the loans could in fact have constituted bribery if it could be shown that the loans were provided in exchange for rulings by the judges for which Minor was not entitled. So, how did prosecutors show that the rulings of the judges were not the correct rulings? In my case the prosecutors had a major problem. I never voted on any case involving Paul Minor or his firm, recusing myself in each instance. Not surprisingly, I was fully acquitted by the jury because of this. However, Whitfield and Teel had each ruled on one of Minor's cases. So, how would prosecutors show that the rulings on these cases were not correct?

Incredibly, they did not even attempt to do so. Because they could not show that the rulings were not correct, prosecutors argued that the simple existence of the loans coupled with rulings by the judges equated to federal bribery.

Prosecutors had the additional benefit of a Republican appointed trial judge in Henry Wingate. Wingate presided over the first trial of this case in which a jury acquitted on some charges and could not reach a verdict on others. Amazingly, Wingate changed many of his rulings from the first trial, ruling exactly opposite on many questions. One of the more significant rulings was that prosecutors did not have to prove a "quid pro quo" in this case. A "quid pro quo" is a basic requirement in any bribery trial and Wingate's ruling on this issue sealed the case for the prosecution. This was clearly error and one is left to wonder why the judge changed his rulings.

In another instance, prosecutors actually offered a jury instruction that said that the defendants could be found guilty "even though you find that the rulings were legal and correct, that the official conduct would have been done anyway, that the official conduct sought to be influenced was lawful and required by law, and that the official conduct was desirable or beneficial to the public welfare." Wingate allowed this instruction. With vague charges by prosecutors and rulings like these from the trial judge it is no surprise that the second jury was able to convict.

So, what about charges of selective prosecution? You might think that it was enough that Minor was singled out for scrutiny and that he faced vague charges of bribery and corruption, but was Minor the only person engaged in this conduct? Incredibly, again the answer is no. During their investigation, prosecutors discovered that it was indeed a common practice for attorneys to guarantee campaign loans to judges. In fact, investigators discovered that other attorneys had guaranteed campaign loans to judges in this very case. One attorney who did so was Richard "Dickie" Scruggs who had guaranteed an $80,000 campaign loan for me. Again, it is not illegal for attorneys to

guarantee loans to judges and Scruggs did nothing wrong. However, he did the exact thing for which Minor was being prosecuted and prosecutors were fully aware of his conduct. Therefore, we are left to wonder why the different treatment for Minor? The answer seems to be because of his support for Democratic candidates and causes. Further, other judges had secured loans from Minor for their campaigns. These judges were not prosecuted even though they did not recuse themselves from Minor's cases and even though they ruled in his favor. Why a different treatment for these judges? It seems that if the judges were conservative enough they were not prosecuted. Again, the prosecution comes back to politics.

CONCLUSION

In a speech to federal prosecutors, on April 1, 1940, former Attorney General of the United States, Robert H. Jackson said:

> If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted. With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone. In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. It is in this realm—in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself.

Today, some sixty-seven years later, Jackson's words are eerily prescient. He was able to foresee the potential for abuse that could be done by an unscrupulous prosecutor. Unfortunately, his

warnings were accurate and have come to fruition in this very case. Even worse, the problem was compounded in this case when the trial judge who should have acted as a moderating force on the prosecution, completely abdicated his role. The result is that United States citizens have been prosecuted for purely partisan political reasons.

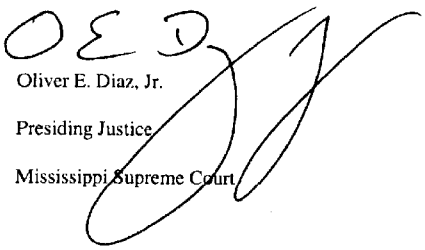
As a result of political persecution, three innocent men in Mississippi have been sentenced to lengthy terms in federal prison. They were selected for prosecution based solely on their political activities. They were subjected to vague charges of corruption which were impossible to defend against. They were prosecuted when others who had done the same things were not. They have been vilified, demoralized and financially bankrupted. And worse, this has all been done in the name of the government that these men have loved and served.

My fear is that in this case we are able to see, in the words of Jackson, "the greatest danger of abuse of prosecuting power." My faith is that this committee will seek answers to the troubling questions that have been raised by the prosecution of Democrats by a partisan Republican prosecutor in Mississippi. It is only when we have answers to these questions that we can begin to restore the trust that has been breached by political operatives who have hijacked our Department of Justice.

Again, thank you for allowing me the opportunity to be heard. It is indeed comforting to know that the pursuit of justice is being advanced by the work of this committee. The wisdom of our founding fathers and their system of checks and balances can be seen in your labors today. Your efforts and inquires into the possibility of political corruption in the United States Department of Justice will

go a long way to restoring our faith in our system of jurisprudence and in fulfilling the promise of "justice for all."

Sincerely,



Oliver E. Diaz, Jr.

Presiding Justice

Mississippi Supreme Court

July 23, 2007
Honorable John Conyers
Chairman of the House Judiciary Committee United States House of Representatives
2426 Rayburn Building
Washington, DC 20515
Honorable Patrick Leahy
Chairman of the Senate Judiciary Committee United States Senate
433 Russell Senate Office Building
Washington DC 20510

Re: Prosecutorial Independence/Selective Prosecutions

The Politicizing of Department Of Justice Dear Congressman Conyers and Senator Leahy:

It is with great interest that I read the articles regarding your Committees' investigations into the alleged "politicizing" of the Department of Justice. I have a personal interest in the subject as I am one of the defendants that has had my professional life ruined because of partisan politics and the determination of this administration to establish political control of all facets of the government, local/state/federal; judicial/legislative/executive; agencies/departments/commissions of government Like the case against former Governor Siegelman of Alabama, the Department of Justice in the Southern Division of Mississippi has used its resources to persecute and prosecute key democratic donors and politicians in an effort to establish the much desired control and to ensure that "tort reform" protects the corporate interests of the governing party.

In Mississippi, Jim Herring, the head of the state Republican Party, called for Democratic Gov. Ronnie Musgrove to return $183,517 in contributions Minor and his Biloxi law firm have given Musgrove over the past 16 years. Musgrove won a state Senate seat in 1987, became lieutenant governor in 1995 and was elected governor four years later. See the attached copy of The Clarion Ledger June 30, 2003 article entitled "Diaz case adds fuel to election campaigns" (http://www.clarionledger.com/news/0307/30/m01eleca.html <outbind://14/(http://www.clarionledger.com/news/0307/30/m01eleca.html>).1

For over four (4) years my co-defendants and I and our attorneys have been trying to make others aware of the abuses of the Department of Justice and the selective prosecution that was our prosecution and trial. To give credibility to my position I enclose for you a copy of the letters I sent my representatives in 20042 on this issue along with the referenced attachments. As I was then, I will be now, open and honest. When I sent my letters in 2004 I was one of the accused. Today I stand convicted of federal charges that stemmed from the politicizing of the Department of Justice. Said politicizing and the use of that office to gain political control of the State of Mississippi's executive, judicial and legislative branches has resulted in grave injustices, my co-defendants and I are now convicts facing sentence, guilty only of what at their worst were ethical violations. As prosecution witness Richard Scruggs testified at the 20073 re-trial, he too had engaged in the same type of conduct for which I and my co-

defendants were convicted, yet Mr. Scruggs has not been prosecuted. Mr. Scruggs is the brother-in-law to U.S. Senator Trent Lott and a prominent trial attorney. (See the enclosed portions of the daily copy trial transcript of Scruggs' testimony enclosed herein.4) To provide you with a brief history, from 1995 to 2000, I was a state court judge (Second District Circuit Court), the youngest elected to serve in Harrison/Hancock/Stone Counties of Mississippi. During my tenure I was one of the few black judges to hold the bench and after my retirement in 2000 in an effort to give racial balance to the judiciary, my name was mentioned as a potential nominee to the federal bench and even for the U.S. Attorney post. While on the bench my policies were considered liberal by some, Mr. Lampton, the U.S. Attorney, being one. Mr. Lampton, the U.S. Attorney that instigated, pursued, sought the indictment and prosecuted my case, shares that view as he looked me in the eye and told me during the initial interview that I would not be involved in the matter if I "had not been so liberal while on the bench." I retired from the bench in 2000, long before the beginning of the investigation that resulted in my indictment and subsequent conviction.

The U.S. Attorney responsible for the investigation and the subsequent indictments and conviction, Dunn Lampton, unsuccessfully ran for Congress on the republican ticket in 1998 and 2000. The attachment to my 2004 letters, the Conflicts of Interests Outline that is enclosed herein, sets forth various blatant ethical breaches and political, social, familial and personal conflicts of interests that U.S. Attorney Dunn Lampton had relative to the prosecution of my case. He has family members that were successfully sued by my co-defendant, the alleged mastermind of this bribery conspiracy, Mr. Paul Minor. Mr. Minor is/was a very successful trial lawyer in our state, he was one of the many plaintiff's lawyers involved in the tobacco litigation that resulted in the huge settlements with several states, including Mississippi. As I said, Mr. Minor had successfully sued the U.S. Attorney's family members for millions.

The fever of tort reform and anti "jackpot justice" was at its highest when this investigation began and the governor's race was just heating up. (One of Lampton's family members and a campaign contributor, a doctor, has been a named defendant in at least five (5) prescription drug, multi plaintiff lawsuits - the plaintiff trial lawyers were made out to be the evil of society and Mr. Minor was a very successful trial lawyer.) Chapters Four, Seven and Eight of Stephanie Mencimer's book Blocking the Courthouse Door: How the Republican Party and Its Corporate Allies Are Taking Away Your Right to Sue give one some idea of the atmosphere here at the time this investigation began and why this investigation was given life.

Attached for your reference is the statistic analysis as prepared by Donald Shields and John Cragan, two professors of communication studying the prosecution patterns of this administration. Shields and Cagan have compiled a database of investigations and/or indictments of candidates and elected officials by U.S. attorneys since the Bush administration came to power. Their study entitled The Political Profiling of Elected Democratic Officials: When Rhetorical Vision Participation Runs Amok examined 375 cases and found that 10 involved independents, 67 involved Republicans, and 298 involved Democrats. The authors opine that the main source of this partisan tilt was the huge

disparity in investigations of local politicians, in which Democrats were seven times as likely as Republicans to face Justice Department scrutiny. My name can be found on page four of Appendix C of this study.

During the course of the investigation and years prosecuting this case, the Department of Justice threatened numerous witnesses involved in my case with indictment relative to "conduit campaign contributions" and investigated several trial lawyers involved in the litigation filed against the prescription drug companies and the doctors involved. The stench of corruption was released in the air in an effort to get the pro-tort reform candidates elected, including the former head of the RNC and one of the most well known lobbyists in D.C., Haley Barbour. While preparing for my defense it was discovered that the U.S. Attorney had various conflicts of interests relative to the prosecution and various motions to dismiss the indictment on the grounds of selective prosecution were filed. The Court refused to allow us a hearing on the issue and denied the motions. The Court also denied us the opportunity to present this as part of our defense at trial. The Conflicts of Interests Outline5 that is enclosed herein (and all supporting documents as found on the CD also enclosed) were proffered into the record, but the jury was not given the opportunity to consider the tainted motives of the prosecution.

The irony in this matter is that the indictment alleged that I used my "position as judge to take official actions and use his official authority and position to provide an unfair advantage" over litigants opposed to his co-accused. Yet, after reviewing the "conflicts of interests" you will see that it would appear that USA Lampton has done the same thing as it relates to contributors to his campaign and the investigation that resulted in this indictment.

I would also point out that USA Lampton was fined by the FEC for, among other reasons, his failures to properly disclose the identities of contributors and receiving monies from an illegal PAC. Though the investigation by the FEC into his violations of the federal campaign finance laws and regulations was on going after he was nominated to the post of U.S. Attorney, he failed to include the investigation in the biographical sketch he had to prepare relative to his nomination. He also continued to accept contributions to his unsuccessful campaign funds and actually used the money collected after his nomination to return money to the unauthorized PAC, to pay the IRS and to pay his fines to the FEC. It was not until he obtained an ethical opinion from the DOJ in 2002, that he terminated his campaign.
In April, the jury convicted me and my two co-defendants. I face sentencing in August. I don't have forty-four (44) current and former Attorney General's to make my case to you. Had it not been for the sacrifices of my attorney, I would have had to defend myself or settle for a public defender. There was no huge defense team made available to me and none that I could afford. I write to you so that you can consider my case with the other cases under review for potential selective prosecution, abuse of office due to the effort to politicize the Department of Justice.

After reviewing the enclosed materials, I believe the adage "he who lives in a glass house" will come to mind. The personal, social and political relationships that the federal prosecutor has relative to the

prosecution clearly reflect that the prosecutor is ethically challenged and his actions have violated DOJ policies and FEC laws as well as our constitutional rights of the accused. I truly believe that my prosecution was part of the efforts of the republican administration and it's appointed U.S. Attorneys to weaken the democratic party's credibility in the state of Mississippi and thus, pave the way for the republican control of all state and federal elected offices.

Should you have any questions or desire any additional information or clarification of any of the issues involved herein please feel free to contact me directly. If you have any suggestions relative to the steps that I can take regarding this injustice, please let me know.
I thank you in advance for taking the time to review these materials.

Sincerely yours,
John H. Whitfield
Attorney at Law
JHW/mmh
Enclosures (see page of numbered notes attached hereto)

cc: Honorable Tammy Baldwin, Member, Committee on the Judiciary
Honorable Linda T. Sánchez, Chairwoman Commercial and Administrative Law Subcommittee

Honorable Artur Davis, Member, Committee on the Judiciary Honorable Edward M. Kennedy, Member Senate Judiciary Committee Honorable Joseph R. Biden, Jr., Member Senate Judiciary Committee

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Mr. COHEN. Thank you, sir.

In what Justice Diaz, who is the sitting member of the Mississippi Supreme Court, describes, "as a scheme hatched by politically corrupt employees of the United States Department of Justice and elsewhere," in 2003, the United States attorney for the Southern District of Mississippi, Mr. Lampton, prosecuted Justice Diaz, Mr. Minor, Mr. Whitfield, another judge and Justice Diaz's ex-wife based on allegations that Mr. Minor attempted to gain an unfair advantage from the judges by guaranteeing loans in the 2000 campaign when Justice Diaz was running for judge, a man who was a Republican but had Democratic friends over the years, against a man named Starrett who was a good 100 percent silk stocking Republican with all the things that Republicans do to be in good graces, a loyal Bushie, so to speak.

In that particular election in 2000, Mr. Minor made guaranteed loans to the candidate running for justice, Mr. Diaz, at approximately $65,000. That was legal in Mississippi. It is perfectly legal under Mississippi law. Another gentleman, Mr. Richard Dickie Scruggs, made loans of $80,000 to Justice Diaz, the same election. There are differences. And you start to see the branching of justice and the definite questions which this Committee, Mr. Chairman, needs to look into.

After that 2000 election, you have the same set of facts. Two legal guaranteed loans made to this Supreme Court justice candidate, one by Mr. Diaz and one by Mr. Minor. Yet in 2003, Justice Diaz, Mr. Minor, Mr. Whitfield, then a judge, another judge and Mr. Diaz's wife are all indicted. They are indicted in July of 2003, even though Justice Diaz had recused himself from every case he had ever had dealing with Mr. Minor, never voted on a thing, but he is indicted.

He is indicted because he guaranteed these loans to this man running for the Supreme Court. Mr. Scruggs guaranteed a loan at a higher amount of money, repaid those loans himself rather than raising money as Mr. Minor did. Accordingly, Mr. Scruggs is more ingratiated, so to speak, with the justice than Mr. Minor would have been, but Mr. Scruggs is not indicted.

Well, what is the difference in the two situations according to these letters? Well, if you look at them, Mr. Minor was one of the largest donors to the Democrats in that state, one of the 10 top donors to John Edwards' Presidential campaign and was known for his support as a trial lawyer in working for the people's interest and against the tobacco interests.

On the other hand, Mr. Scruggs, also a trial lawyer, also a trial lawyer, had after that election given half a million dollars to Republican causes, a quarter of a million dollars to the Bush-Cheney campaign, and, coincidentally or not, is the brother-in-law of Senator Trent Lott of Mississippi. Well, Mr. Scruggs not indicted and apparently not even investigated.

It is this suggestion of politically motivated selective prosecution that raises the question of whether the prosecution of Justice Diaz and Mr. Minor fits in the larger potential pattern of selective prosecution that we are discussing today.

Justice Diaz was not only indicted, but once the jury found him not guilty, acquitted him of charges. Three days later, he is re-in-

dicted. And when you read through these letters and you see a pattern of relationships and conflicts of interest that are not taken into consideration by the court on the part of Mr. Lampton who twice ran for Congress as a Republican, was constantly the opposition of Mr. Minor—he was his foil, his antithesis—and Mr. Minor had sued a Fortune 500 company which Mr. Lampton's family is involved in—Mr. Lampton does not recuse himself. He brings a prosecution looking apparently at the man first and the facts later and prosecutes and conflict of interest did not discuss.

What I would like to ask in this situation is——

Mr. FORBES. Mr. Chairman, the time has long expired.

Mr. COHEN. I would just like to ask the Chairman if he could look into and include in this particular hearing discussions of whether selective prosecution, politically motivated, happened in Mississippi with these Democratic officeholders and include the Mississippi case in the document requests that are made and ask the Committee to make this case a full part of its inquiry. If you look at it, it does an injustice to the State of Mississippi, to Lady Justice and to what we know as fair play in America.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you. The gentleman's time has expired.

We have a Committee hearing in this room at 1. That will begin at the conclusion of this hearing.

Next is the gentlelady from California, Ms. Waters?

Ms. WATERS. Thank you very much, Mr. Chairman.

I would like to first just congratulate you for this hearing. This is extremely important, and I would think that all the Members of this Committee from both sides of the aisle would be supportive of this hearing and work that should be done to ensure that the citizens of this country can depend on the criminal justice system and the Justice Department to be impartial, to be fair and not single out or political profile elected officials and basically politicize the process. So I am very thankful to you.

I would just like to turn to Mr. Shields.

Professor Shields, earlier, you were asked whether or not you were an attorney, and you were also asked if you had a degree in statistics. I would like to debunk the notion that being an attorney would somehow make you a better researcher or would make you a better professor——

Mr. SHIELDS. Thank you.

Ms. WATERS [continuing]. Or would somehow give you more credibility than the professor emeritus that you are, the Department of Communications, University of Missouri, St. Louis, and lecturer, Department of Communications Studies at the University of Missouri, Kansas City. You are, indeed, professor emeritus, Department of Communication, University of Missouri, St. Louis. Is that true?

Mr. SHIELDS. That is true.

Ms. WATERS. And you are published?

Mr. SHIELDS. Yes.

Ms. WATERS. Have you ever been accused of having sloppy research or having published something that proved to be untrue or statistically incorrect?

Mr. SHIELDS. Not to my knowledge.

Ms. WATERS. Is it true that when you started out the work that led you to where you have come in looking at the political profiling that that is not where you started out. You were looking for something else. Is that correct?

Mr. SHIELDS. That is correct.

Ms. WATERS. Would you tell the Committee what it was you were researching when you stumbled upon this political profiling?

Mr. SHIELDS. Yes. As I said in my opening statement, I was studying rhetorical visions and had noted that with the end of Communism, why there was not a dominant conservative theme, piece of rhetoric around, and then John Ashcroft, who happens to be from my state, Missouri, and was once our attorney general, was once our governor, was once our United States senator before becoming Attorney General for the Nation, began a public corruption initiative, and so I was studying to see if people were caught up in this new vision, and he was running around not only the country giving speeches on public corruption, but he was running around the world giving speeches on public corruption.

Ms. WATERS. And——

Mr. SHIELDS. So I was studying this.

Ms. WATERS. As you describe this, this was a kind of new approach to preemptive strike on corruption——

Mr. SHIELDS. Yes, that is correct.

Ms. WATERS [continuing]. That Mr. Ashcroft was talking about?

Mr. SHIELDS. It was a move away from investigating and prosecuting actual crimes to kind of ferreting them out before they happened.

Ms. WATERS. And in your research, you had discovered that there had been 375 investigations and-or indictments of candidates and elected officials brought by U.S. attorneys since 2001.

Mr. SHIELDS. Yes.

Ms. WATERS. Would you reiterate again for us and would you give us the percentages of indictments relative to Democrats and Republicans?

Mr. SHIELDS. Yes. As I also said in my opening remarks, the written statement that I provided for the public record for here now has 820 investigations, not just 375. So I will just give you the new numbers. And the new numbers are 5.6 to 1 Democrats investigated versus each Republican. So, for every Republican in this room, if you were investigated, there would be 5.6 Democrats that were investigated along with you by this Justice Department.

Ms. WATERS. You did much of your research from news reports, and you mentioned that you were Googling and——

Mr. SHIELDS. Yes.

Ms. WATERS [continuing]. Going on the Internet. Did you find it odd that so much was being written about what appeared to be the political profiling of elected officials?

Mr. SHIELDS. Well, what is interesting is by looking at investigations at the local level, what I was really looking at was little newspaper stories from all over the country about little local candidates and those stories did not get publicized in other newspapers. So, if you were not reading the Birmingham News, you did not know what was happening in some community around it in Alabama, but by doing the Google search, you could find those arti-

cles and you would know. So it was the collective unity of all of those small newspapers across the country that enabled me to come up with 120 cases through September 16, which is when Attorney General Gonzales stepped down.

Ms. WATERS. Aside from questions that have basically, I think, attempted to discredit you and your work, do you find it odd that the Justice Department has refused to give information to this Committee or to you or anybody else who would request it that would further help to illuminate exactly what has been going on and if, in fact, they have not been profiling, they could clear up the questions that are being raised or, if they are, we would have more information by which to do our oversight and do the corrections? Do you find that odd?

Mr. SHIELDS. Yes, I do find that odd. There is no doubt that the Justice Department has this data and, if they would release it, we would know the answers to just how accurate my study is tomorrow morning.

I can tell you that in New Jersey, the U.S. attorney for New Jersey is very proud of the fact that he goes after elected officials, and he announces periodically an update on the number of actual elected officials that he has investigated and prosecuted, and his last statement was on September the 24th, and he said he had 124. Well, I have 116 of those in my database, and so it would seem to me that I am within about 10 percent of having a census of the investigations that are out there.

Ms. WATERS. Thank you.

Mr. SCOTT. The gentlelady's time has expired.

The gentlelady from Ohio is recognized. She has by unanimous consent yielded her time to the gentleman from Alabama.

Mr. DAVIS. Thank you, Mr. Chairman.

Let me thank all of my colleagues for being so generous in yielding time for me to bring out as many facts as I could regarding this case. This is not a jury, but I do feel the public is owed some conclusions. I am about to give one Member's conclusions.

Ms. Siegelman and her two children are here today, and I will tell all three of you very candidly that 6 months ago, if you had asked me if you could rely that the system that prosecuted your father and your husband had integrity, 6 months ago, I would have told you that I believe in the system. I cannot sit here today and say to you that I have confidence that the system worked in a fair and just manner in this case. I will tell you just some of the reasons.

At every turn, we see politics. Government was very eager to prosecute Don Siegelman in 2002, sat down with a man named Lanny Young, listened to what he had to say. The only time they believed him is when he talked about Don Siegelman. That suggests selectiveness.

We know there has been a lot of dispute around the credibility of this lady, Jill Simpson. None of us has a truth detector. I do know this much. She made her statements under oath in May, it took until this morning for countering affidavits to make their way to this Committee, and what do all the countering affidavits say? No phone call on November 18, 2002. Did not happen. Pull the phone records. Jill Simpson called Rob Riley's office on November

18, 2002. Do not have a truth serum, but I know on that critical point the countering affidavits are disproven and she is bolstered.

Look at Doug Jones's testimony. He describes a U.S. attorney's office that was all set to walk away from this case, had doubts about its own witnesses, ready to close the books. All of a sudden, Washington comes in. By the way, Washington comes in in the very timeframe that Simpson said she was told they came in, the very timeframe she says she was told that Rove intervened, and all of a sudden, the Department of Justice begins to run the show.

What do we know about this Department of Justice? We know that it purged U.S. attorneys for being insufficiently loyal Bushies, and that is not my phrase. That is the phrase of one of the people who worked in the Department of Justice. We know that this Department of Justice had a pattern of disproportionate prosecutions so steep and so mountainous that the odds are 10,000 to one against it. We know that.

Every time you look at the twists and turns in this case, you see the presence of party politics. So I have to conclude this much.

Before that, let me make this other one observation. Mr. Lungren, I am with you. This is a mystery to me, too, because I know a lot of these individuals. I like the prosecutors in the Montgomery office. I served with them, know them to be good men. I wonder how in the world they got pulled into bringing a case so lacking in merit that they wanted to walk away from it.

Maybe this is the best answer. Maybe we ought to stop asking who is lying and who is telling the truth because we cannot sort that and focus on this one question: Could it be that there was such a culture that the Gonzales Justice Department created that good prosecutors were somehow pulled into it and that they believed the only way to maybe earn spurs in this department is to go out and turn the U.S. attorney's office into a political tool? Maybe they came to believe the only way to advance is to use this office to get political enemies. Maybe before they even knew it, they started to think the U.S. attorney's office was just another thing to be used, another piece of opposition research to be put on the table.

I would like to think that was not the case, but that is the culture that I see tainted by all of this evidence. So I think, ladies and gentleman, Members of the Committee, politics influenced this case. That is the irresistible conclusion based on the facts—Washington politics, Karl Rove politics—and finally, the politics that says if I cannot beat your ideas, if I cannot have confidence that I can beat you at the ballot box, maybe I can do it the old-fashioned way and just destroy you and destroy your reputation.

Ladies and gentleman, if that is what U.S. attorneys' offices and the Department of Justice becomes, it eats away at the integrity of this whole system. People who have committed crimes ought to go to jail, but, Mr. Jones, you said it better than anyone could say it today. Diligent prosecutors unaffected by politics investigate crimes, not people in search of a theory hoping that they can put them in the dock.

Thank you.

Mr. SCOTT. Thank you. The gentleman's time has expired.

The gentlelady from Texas, Ms. Jackson Lee?

Ms. JACKSON LEE. Mr. Chairman, I heard a comment as I was coming into the room that this has been devastating. I want to thank the distinguished panel for their presence here, and thank you for your indulgence of this timeframe. I thank the Chairmen of the joint Committees for their leadership on this issue.

I just want to quickly make a point on the record, and then I am going to go right at some pointed questions. My colleagues have been certainly direct.

I hear the constant refrain of Karl Rove, and I would say to my Chairpersons that it seems that he should be in this room. Karl Rove has had his name engaged repeatedly in the whole episode and debacle dealing with the fired U.S. attorneys. It seems that those U.S. attorneys were from swing states, the very places that a political Karl Rove would want to win. Karl Rove has a long history with Alabama, and he seems to have been able to engineer the GOP takeover of Alabama in the 1990's. We know that our President has been to Alabama.

Mr. SCOTT. Will the gentlelady suspend for just a minute?

I understand that Mr. Jones has a flight that he might be able to make if he leaves right this minute.

Mr. JONES. It is close.

Mr. SCOTT. Are there any questions to Mr. Jones? If not, you are excused.

Mr. JONES. Thank you, Mr. Chairman.

Ms. JACKSON LEE. Thank you, Mr. Jones.

As well, we know that Governor Siegelman was someone who changed the landscape, if you will, of politics in Alabama.

So, Mr. Jones, as you leave, let me thank you and just simply say: Do you think they were out to get Mr. Siegelman, and I will let you go at that.

Mr. JONES. I do not think there is any question that there were a lot of people out to get him. Yes, ma'am.

Ms. JACKSON LEE. No question?

Mr. JONES. No question.

Ms. JACKSON LEE. Thank you for that answer.

Let me pose my questions quickly to the two gentlemen. I would say to you, Professor Shields, in looking at the numbers, do you think that it might have been a thought that we could command that they were out to get Governor Siegelman?

Mr. SHIELDS. Well, I only know about the dismissal and then the second re-indictment.

Ms. JACKSON LEE. Yes.

Mr. SHIELDS. I go by the fact that there was a dismissal and then there was a sudden re-indictment.

Ms. JACKSON LEE. And so that looks like a turn of events out of the ordinary?

Mr. SHIELDS. Yes.

Ms. JACKSON LEE. Let me for the record indicate that one of my colleagues mentioned Mr. Jefferson. Let me make it very clear that I think your numbers encapture his circumstances, but I think it is important for our colleagues to note on the record Mr. Jefferson has been protesting and presenting his innocence and it is one of the longest cases we have ever seen in comparing it other cases. It was the personal choice of any Member of Congress who decided

to plea. It was their personal choice. To date, Mr. Jefferson has not, and he has continued to insist on his innocence, and I think that speaks volumes.

I do want to go to this line of questioning about inaction. We have talked about selective prosecution, and, General Thornburgh, I want you to know that we have respected your legacy in civil rights. Those of us who have studied generals and understand we have heard your voice being very strong.

So I am going to pose you a question and this is on inertia, but I do want to hear a little bit about Dr. Wecht, a 75-year-old, because that speaks to discretion and judgment and why someone who seemed to have the association with maybe more liberal viewpoints might have been subjected to selective prosecution.

I want to bring up the gentleman in Chicago that was a Democratic fundraiser, Professor Shields, if you happen to know about that individual who was asked to roll over and did not roll over, but, more importantly, was told if you roll over, you will go free.

But really I want you to get at this question of lack of enforcement. In the Western District of Louisiana in the Jena 6 case, there was a sitting U.S. attorney who kept his job who was an appointee who did not see fit to investigate or pursue the idea of hanging nooses, the idea of disparate treatment—it was on the state level—but the idea of civil rights prosecution, meaning going forward to suggest that the abuse of a student, taking a gun out, beating up a Black student, even though we do not condone the actions—we are not condoning the actions of those youngsters—but if you would speak to the two points I gave you and then this question of selective inertia where the U.S. attorney could have been effective but for politics possibly holding him back.

General Thornburgh, you want to speak on your case and then if you would to the other points I have made.

Mr. THORNBURGH. As I told the Committee earlier, Representative Jackson Lee, I have a hard time figuring out why the U.S. attorney would go to such lengths to convert these trivial irregularities into Federal felony charges. When I look at it in the context of her having carried out no investigations or prosecutions against Republicans and bringing this case against a prominent Democrat and measure that against the backdrop of the allegations of nationwide actions of a similar ilk, I can only come to the conclusion that the prosecution was politically motivated.

I was asked earlier whether I had any evidence of conversations between the White House or Federal officials. No, I do not, obviously, have those, but I look at this and I try my best to come up with some other explanation as to why these charges might have been brought, and I come up empty-handed.

I must apologize for being unable to comment on the Jena case. I simply do not know, obviously, with any degree of certainty that I have about the case I am discussing where I represent the individual who is the subject, a target of this investigation the facts, and it would be, I think you would agree, irresponsible for me to offer an opinion on that in that context.

Ms. JACKSON LEE. Professor Shields, inertia in prosecution? Selective nonprosecution?

Mr. SHIELDS. Well, in regard to the cases that are not of elected officials or candidates, I did not study those. I can tell you that I have run across a number of investigations of fundraisers. Now which political party these fundraisers are of, I do not know, but I did not track them as a database.

I think there is no doubt that the data speaks that something caused this irregularity, this disproportion between investigations of Democrats and investigations of Republicans. It was either policy driven, which I suspect—the data and the other circumstantial evidence that this has been brought up here today and in previous months by the Judiciary Committee suggests its policy driven. But even if it were a result of just independent U.S. attorneys acting, it is a bad thing. It is not good to investigate 5.6 Democrats to every one Republican. When the ratio should be 1.2 Democrats to one Republican.

So, even if it is not policy driven, it is something that this Committee and the Congress needs to enact certain structural changes that will prohibit that from continuing.

Ms. JACKSON LEE. And the same thing with inaction?

Mr. SHIELDS. And the same thing. I mean, prosecutors have always had discretion not to bow out of a case, but there does not seem to be any harm in that. But there is harm if it is done selectively.

Mr. SCOTT. The gentlelady's time has expired.

The gentlelady from Wisconsin, Ms. Baldwin?

Ms. BALDWIN. Thank you, Mr. Chairman. I appreciate the fact that you are holding this hearing today, and I certainly appreciate the patient panel of witnesses for coming to speak with us today.

I had actually intended to ask my question of Mr. Jones, but I will offer these witnesses an opportunity to respond.

But I want to use my time to address the case that has been very, very controversial in my home state of Wisconsin, the prosecution of a state employee by the name of Georgia Thompson. Many, I think, are already familiar with the Georgia Thompson case.

She was a procurement officer for the State of Wisconsin, a civil servant who was hired during the term of a Republican governor, and she was criminally prosecuted on charges that she awarded a contract to a firm owned by someone who had made campaign donations to our Democratic governor.

The case raised a lot of question marks when the Seventh Circuit Appeals Court reversed her conviction last April calling the government's evidence "beyond thin" and describing the government's legal theories as essentially "preposterous," and in a very unusual move, the Seventh Circuit Court of Appeals issued an order the very day of oral arguments directing the government, the authorities to release Ms. Thompson immediately before close of business that day, at oral arguments.

When it became clear that Ms. Thompson had not even known about the donations and the winning bidder had submitted the lowest bid, the question became even more urgent. Why was this woman prosecuted and sent to prison?

Well, one possible answer is suggested in a letter submitted to the Committee by counsel for the state workers union who rep-

resent Ms. Thompson, and I would like to ask, Mr. Chairman, unanimous consent to enter that letter into the record.

[The information referred to follows:]

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October 10, 2007

Honorable John Conyers, Jr., Chair
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Re: The Politicized "Honest Services" Prosecution of a State Employee *U.S. v. Thompson*, case no. 06-CR-20 (Eastern District of Wisconsin) Appeal no. 06-3576 (Seventh Circuit Court of Appeals)

Dear Chairman Conyers:

I am writing on behalf of my client AFT-Wisconsin (AFT-W) and its affiliate unions which represent, among others, approximately 6,500 employees of the State of Wisconsin. AFT-W members are employed in a broad, cross-section of professional positions. Their job responsibilities require them regularly to exercise their professional judgment to decide questions involving large sums of money and affecting fundamental rights of citizens. The highly politicized federal prosecution and conviction of Georgia Thompson for mail and wire fraud based on her alleged deprivation of the public and the State of her "honest services," in violation of 18 U.S.C. §§1341 and 1346, potentially imposes a profound risk of criminal prosecution on AFT-W members in the routine exercise of their duties and responsibilities.

Georgia Thompson was a State procurement section chief, which is a civil service position. In 2005, she presided over a committee selecting a State travel agent to fulfill the needs of about forty percent of the State's annual travel budget. The government prosecuted Ms. Thompson because two executives of the travel agency which was selected each had donated $10,000 to the re-election campaign of the Democratic Governor. The government's unsupported theory was that Ms. Thompson influenced the travel contract selection of the Governor's benefactors to gain political advantage for her supervisors and to ensure her own job security. A jury found that Ms. Thompson

had criminally steered the travel contract to the winning agency, using a State administratively-sanctioned procedure seeking the "best and final offer" from the competing applicants for the state contract. Although the winning agency was the low bidder for the State's contract, members of the selection committee had preferentially rated other competitors and Ms. Thompson invoked the process to award the contract to the low bidder.

According to the Seventh Circuit Court of Appeals, which reversed the conviction, there was no *quid pro quo* involved and there was not "so much as a whiff of a kickback or any similar impropriety" in the contract choice. Further, there was no dispute that Georgia Thompson had no knowledge about the travel agents' donations to the Governor, which had been properly disclosed and reported. Three months after the decision to award the State travel contract, Ms. Thompson received a meager $1,000 raise through normal civil-service processes. The prosecuting U.S. Attorney Steven Biskupic portrayed this raise as Ms. Thompson's "private gain" from having criminally skewed the contract award to the Governor's political donor.

As characterized by the Court of Appeals, the government based its prosecution of Ms. Thompson on the theory that "any public employee's knowing deviation from state procurement rules is a federal felony, no matter why the employee chose to bend the rules, as long as the employee gains in the process." Immediately after the Court heard oral argument, it reversed the conviction and Ms. Thompson's 18-month sentence and ordered her released from federal prison. A panel of three Court of Appeals judges issued a blistering opinion that highlighted the paucity of evidence against Ms. Thompson and the shaky basis of the prosecution. *United States v. Thompson*, 484 F.3d 877 (7th Cir. 2007). At oral argument, one judge announced that the government's "evidence is beyond thin." In its opinion, the Court assailed the prosecution:

> The prosecutor's theory, which the jury accepted, is that Thompson deprived Wisconsin of her "honest services" - that is, of her duty to implement state law the way the administrative code laid it down, with only 300 of 1,000 points apportioned according to price, while 200 points were available to the best-looking or most mellifluous oral presenter, even if Thompson deemed that allocation silly or counterproductive.
>
> [T]hat approach has the potential to turn violations of state rules into federal crimes. When the Supreme Court reverses a court of appeals, it is apt to say (as the prosecutor says about Thompson) that public officials have failed to implement the law correctly. Does it follow that judges who are reversed have deprived the United States of their honest services and thus committed mail fraud?

United States v. Thompson, 484 F.3d at 882.

Like Georgia Thompson, State employees represented by AFT-W daily perform a myriad of official functions, including the administration and oversight of State government benefits, funds, licenses, as well as oversight of private business in which the public has an interest. Their work can unknowingly benefit political friends of their supervisors and eventually result in their advancement or a raise for their job well done.

The AFT-W affiliate Wisconsin Professional Employees Council, Local 4848 (WPEC) represents approximately 4,750 members employed by various state agencies in professional fiscal and staff services, such as procurement specialists, accountants, auditors, financial examiners, revenue agents, tax specialists, licensing examiners and program coordinators. WPEC member real estate specialists in the State Department of Transportation acquire and condemn real property and make property value assessments of such properties. Procurement specialists and purchasing agents, who are employed by a number of State agencies, may typically award many state contracts involving less than $25,000, based on a simplified bidding process. They may execute contracts for larger amounts without using a Request for Proposal process. In those circumstances, procurement specialists and purchasing agents exercise their discretion and professional judgment in recommending such contract awards.

The more than 1,500 members of Wisconsin Science Professionals, Local 3732 (WSP) are employed by the State of Wisconsin in occupations related to fishery, forestry, wildlife, and parks. WSP member hydrogeologists, toxicologists, biologists, water resource management specialists, waste water specialists, air management specialists, and others prepare environmental impact statements. These statements are important factors in the granting of various state permits for construction and development on lands and waterways within the State. Waste management specialists employed by the Department of Natural Resources, the Department of Transportation, and the Department of Agriculture, Trade & Consumer Protection award consulting contracts through three-person committees. These contracts govern repairs to contaminated land and are valued up to $250,000.

Many other classifications of employees represented by AFT-W affiliates exercise their independent judgment and discretion in ways that have significant economic impact on citizens and businesses involved in various activities within the State of Wisconsin. For example, chemists employed by the Department of Natural Resources are responsible for laboratory certification or registration and effectively issue business licenses. Revenue field auditors assess taxes owed by entities and have discretion to reach agreement on tax issues for amounts not exceeding $50,000 in tax per issue.

Financial examiners audit the records of insurance companies and make decisions whether capital rations, reserves and liquidity are sufficient to insure the companies' solvency. Financial examiners employed by the Department of Financial Institutions exercise their professional judgment to audit state-licensed banks and credit unions to insure that losses and uncollected credits are properly reported and that banks maintain a proper ratio between capital savings and capital borrowed. Consumer credit examiners process licenses, conduct examinations and handle consumer complaints regarding state-licensed, financial services companies. State public defenders negotiate plea deals for indigent clients who may have some relation, familial or otherwise, with political donors.

The experience of Georgia Thompson poses unique and limitless risks for these and other state employees. State employees, like employees in the private sector, have legitimate and weighty interests in their job security and in the satisfaction of their supervisors. The government's theory of Ms. Thompson's federal criminal liability, predicated on an employee's actions "intended to cause political advantage for her supervisors" and "help her job security," potentially impugns with criminal scienter an employee's routine, discretionary actions whenever those actions cause significant public benefits, resources, or funds to redound to a political donor or supporter of the employee's superior. The sole fact that an affected party is a political donor to an employee's superior should never by itself create any inference that the employee denied the public and the state her honest services. Such prosecution has a chilling effect on the daily work of State government due to legitimate employee fears that the routine performance of their duties may subject them to prosecutorial scrutiny and potential criminal liability.

Further, the Thompson prosecution under wire and mail fraud subverts a constitutional doctrine that provides immunity to public officials. Such immunity is designed precisely to protect their ability to exercise their professional judgment in discretionary acts.

In addition, the context of the prosecution of Ms. Thompson was a dangerous mix of partisan electoral politics. Following Ms. Thompson's release after four months in federal prison, the New York Times editorialized that U.S. Attorney Biskupic had "turned a flimsy case into a campaign issue that nearly helped Republicans win a pivotal governor's race." Biskupic brought Ms. Thompson to trial in his jurisdiction in the Eastern District of Wisconsin (Milwaukee), although Ms. Thompson lived and worked in state government in the Western District (Madison). In the fall of 2005, Biskupic publicly announced his ongoing investigation of Ms. Thompson, who was indicted in January 2006. The trial began that summer and Ms. Thompson was

sentenced in September, before the gubernatorial election in November. The local press reports that, during that time, the Republican party spent millions of dollars on advertising portraying Ms. Thompson as a symbol of corruption in the administration of the incumbent Democratic governor.

Ms. Thompson's excruciating experience highlights the need for reform of the federal wire and mail fraud statutes to clarify and narrow the elements of the crime of honest services mail fraud. To defend herself and her good name, Ms. Thompson spent approximately $360,000, exhausting her life savings, losing her job and losing her home. Law-abiding state employees whose daily work and decision-making potentially puts them at the same risk should not work in fear that they too will become political pawns in high-stakes federal, criminal prosecutions serving dubious prosecutorial goals. The Seventh Circuit addressed the need for law reform:

> This prosecution, which led to the conviction and imprisonment of a civil servant for conduct that, as far as this record shows, was designed to pursue the public interest as the employee understood it, may well induce Congress to take another look at the wisdom of enacting ambulatory criminal prohibitions. Haziness designed to avoid loopholes through which bad persons can wriggle can impose high costs on people the statute was not designed to catch.

U.S. v. Thompson, 484 F.3d at 884.

Please enter this statement into the record of the forthcoming Committee hearing on this matter. Thank you for the opportunity to address this matter on behalf of the Wisconsin State employee members of the AFT-Wisconsin. As an advocate for over 6,500 professional state employees, AFT-W seeks to ensure that state employees can perform their jobs and engage in the lawful exercise of their professional judgment without fear of ambiguous, politically-motivated federal criminal prosecution.

Very truly yours,

HAWKS QUINDEL EHLKE & PERRY, S.C.

By

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Greg Georg, President, Wisconsin Professional Employees Council
John Schettle, President, Wisconsin Physician & Dentist Association
Jeff Richter, President, Professional Employees in Research, Statistics & Analysis

Mr. SCOTT. Without objection, so ordered.

Ms. BALDWIN. Thank you, Mr. Chairman.

I especially commend the letter to my colleagues because it really catalogs the awful personal toll that this prosecution on Ms. Thompson produced. She in the course of this prosecution to defend herself and her good name spent approximately $360,000, exhausting her entire life savings, in the course of the prosecution, lost her job and her home, facts, I think, that we should never lose sight of when we consider these cases and their consequences.

As to why the case might have been brought, the letter also describes the prosecution as highly politicized. It further states, "The context of the prosecution of Ms. Thompson was a dangerous mix of partisan electoral politics."

Following Ms. Thompson's release after 4 months in Federal prison, The New York Times editorialized that U.S. Attorney Biskupic had turned a flimsy case into a campaign issue that nearly helped Republicans win a pivotal governor's race.

The letter goes on to question why the case was brought in the Milwaukee Federal court instead of Madison where Ms. Thompson lived, the contract was executed, where she worked, and questions the timing of the indictment and the trial alongside the timing of a heated electoral campaign.

Quoting again from the letter, "During that time, the Republican Party spent millions of dollars on advertising specifically portraying Ms. Thompson as a symbol of corruption of the incumbent Democratic regime. It is clear that the prosecution was politically useful to Republicans, but, at this point, of course, we do not know if that was a side effect or if the prosecution was, in fact, politically motivated."

Now U.S. Attorney Biskupic, who is respected in the State of Wisconsin, has strongly denied this, and I have not formed a judgment on that ultimate issue, and I have an open mind, but we do know a few things.

First, we know that for a time, Mr. Biskupic's name was on the U.S. attorney's firing list, and he appears to have been removed from that list after the Thompson indictment was brought.

Second, we know that Karl Rove was concerned about so-called vote fraud enforcement in Mr. Biskupic's district, and other U.S. attorneys who were not aggressive enough on those cases to satisfy Republican interests do appear to have actually been fired.

Finally, we know that the Seventh Circuit has told us that this was not just a weak case. It appears to have been simply an unreasonable one. It is one thing to have a conviction reversed. It is quite another thing altogether for an appeals court to reverse a conviction, to ridicule the prosecution and to order the government to release the defendant before the close of business that very day.

So, on that note, I will give you two the question I was going to give to Mr. Jones. Are you aware of the frequency of criminal convictions, especially those reversed in that fashion and, if not, what would you reaction have been to something like that?

Mr. THORNBURGH. May I speak to that, Mr. Chairman?

Mr. SCOTT. Yes, Mr. Thornburgh?

Mr. THORNBURGH. I ask to do so because the findings of the Seventh Circuit Court in the Thompson case relate directly to the grievance that I presented to this Committee today.

In the opinion rendered by the Seventh Circuit, a distinguished Federal judge, Frank Easterbrook—I must make full disclosure, a former colleague of mine at the Department of Justice, but a respected Federal judge—expressed the growing misgivings that Federal courts have about overzealous applications of section 666 and 1346 of the Federal Code, the very sections that we have pointed out were abused in the Wecht prosecution.

And knowing that this Committee is interested not only in hearing grievances, but in taking constructive action to prevent this from recurring, I would refer you to Judge Easterbrook's suggestion that Congress take another look at the wisdom of enacting ambulatory criminal prohibitions, which is a fancy way of saying prohibitions that are adjustable to the moment and can be fashioned in the manner that has been discussed today.

I would ask on behalf of all those defendants whose cases have been discussed here today involving these open-ended kinds of opportunities that the Congress might be well-advised in its oversight hearings to look at these particular statutes and the opportunity for abuse that lies within having such vague and open-ended admonitions in the Federal Criminal Code.

Thank you.

Mr. SCOTT. Thank you.

Mr. Shields?

Ms. JACKSON LEE. I have a unanimous consent, Mr. Chairman.

Mr. SCOTT. For what?

Ms. JACKSON LEE. To put two names on the record that I did not mention in my remarks.

Mr. SCOTT. The gentlelady will state the names.

Ms. JACKSON LEE. Yes, I would like to put on the record Democratic contributor Peter Palivos that I was mentioning in my remarks and also former Councilmember Ben Reyes from Houston who was subjected to prosecution under the hotel sting operation in Houston, Texas.

I yield back.

Mr. SCOTT. Without objection.

I want to thank our witnesses for their testimony today. Members may have additional written questions which we will forward to you and ask that you answer as promptly as you can in order that they may be made part of the record.

Without objection, the hearing record will remain open for 1 week for the submission of additional materials, and without objection, the Committee stands adjourned.

We will begin the next hearing as soon as we can get set up.

[Whereupon, at 1:30 p.m., the Subcommittees were adjourned.]

APPENDIX

Material Submitted for the Hearing Record

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 4, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter, dated July 17, 2007, which requested information and documents in connection with the Committee's oversight inquiry regarding allegations of political interference in the matters of United States v. Cyril H. Wecht (W.D. Pa.), United States v. Georgia Thompson (E.D. Wis.), and United States v. Don Siegelman (M.D. Ala.). We are sending similar responses to the other Members who joined in your letter to us. We are also sending copies of this letter to the Chairman and Ranking Minority Member of the Senate Judiciary Committee, who requested information regarding the Georgia Thompson matter in a letter, dated April 10, 2007.

In response to your request, we searched for documents in the relevant U.S. Attorney's Offices, the Criminal Division, the Office of the Deputy Attorney General for the Thompson and Wecht matters, and the Executive Office for U.S. Attorneys and the Office of the Attorney General for the Thompson matter. While our search is continuing and we will supplement our response if additional documents are found, we have not identified any documents related to these three cases containing communications from White House staff, Members of Congress, congressional staff, or state and local political party officials or their staff.

The Department has substantial confidentiality interests in predecisional memoranda, analysis, and other deliberative communications concerning our decisions whether to prosecute individuals. Prosecution memoranda contain frank assessments of evidence and witnesses, recommendations, and evaluations of legal issues. We believe that their disclosure would chill the candid internal deliberations that are essential to the discharge of our law enforcement responsibilities. Moreover, the disclosure of these types of materials would adversely impact individual due process and privacy interests. Finally, disclosure would raise substantial separation of powers concerns and risk compromise to the integrity of the criminal justice process. The longstanding Department position was articulated by the Attorney General (as Counsel to the President) in a letter to Congressman Burton regarding the President's assertion of executive privilege over prosecution memoranda:

> [C]ongressional access to these kinds of sensitive prosecutorial decisionmaking documents would threaten to politicize the criminal justice process and thereby threaten individual liberty. The Executive Branch is appropriately concerned that the prospect of congressional review of prosecution or declination memoranda might lead prosecutors to err on the side of investigation or prosecution solely to avoid political criticism. This would, in turn, undermine public and judicial confidence in our law enforcement processes.

Letter to the Honorable Dan Burton, Chairman, Committee on Government Reform, U.S. House of Representatives, from Alberto R. Gonzales, Counsel to the President (Jan. 10, 2002).

Also based on long-standing policy and many of the same considerations, we do not provide non-public information about pending law enforcement matters. We want to avoid any perception that the conduct of our criminal investigations and prosecutions is subject to political influence. Disclosures of such non-public information could also compromise our law enforcement efforts by revealing our investigative plan and prosecution priorities and damage the privacy and due process interests of individuals involved. Accordingly, we are not providing non-public documents relating to our ongoing investigations and prosecutions of Dr. Wecht and Mr. Siegelman. We believe that the publicly available materials in those cases provide important information that we hope will be helpful to the Committee.

In United States v. Siegelman, Mr. Siegelman was tried and convicted by a jury of federal funds bribery (18 U.S.C. § 666), conspiracy to commit mail fraud (18 U.S.C. § 371), honest services mail fraud (18 U.S.C. §§ 1341 and 1346), and obstruction of justice (18 U.S.C. § 1512). Subsequently, Mr. Siegelman filed an appeal of his conviction and sentence in the United States Court of Appeals for the Eleventh Circuit. This case was brought by career prosecutors, following the May 2002 recusal of U.S. Attorney Leura Canary, based upon the law and the evidence. The appeal is pending and has not yet been briefed by the parties. Although, as discussed above, we cannot provide deliberative documents relating to the charging decision in this matter, we have enclosed publicly-available materials which provide background on the government's position in the case. Presently, we are continuing to search for potentially responsive documents, and we will supplement this response when that process is completed.

The focus of recent controversy has been a May 2007 affidavit signed by Alabama attorney Jill Simpson. Ms. Simpson signed the affidavit almost a year after Mr. Siegelman's conviction, and it has never been filed in the case. In the affidavit, Ms. Simpson claims to have overheard statements she attributes to U.S. Attorney Leura Canary's husband. The national media has interpreted the alleged statements as linking the prosecution of former Governor Siegelman to Karl Rove.

At the time Ms. Simpson alleges the purported statements were made, Mr. Siegelman was already under federal investigation. The existence of the investigation had been widely reported in newspapers and television reports, some released more than ten months before the alleged conversation. The alleged conversation described by Ms. Simpson has been denied by all of the alleged participants except Ms. Simpson. Indeed, even Mr. Siegelman states that Ms. Simpson's affidavit is false as it relates to him. Moreover, according to Ms. Simpson, she met with Mr. Siegelman and his co-defendant Richard Scrushy for several months before signing the statement at their urging. She also claims to have provided legal advice to them. She contends she drafted but did not sign a motion filed by Mr. Scrushy seeking to have the federal judge removed from the case.

Finally, your letter mentions allegations of jury tampering that were raised in the case. The defendants made these allegations the basis of several motions for relief. The Court conducted an extensive investigation into the allegations of juror misconduct, conducting two evidentiary hearings and calling all twelve jurors to the stand to answer numerous questions under oath. Following its independent investigation, the Court found no basis for a new trial under the governing authorities. The Court's order on the issue is included among the documents furnished to you with this letter. The Court's ruling on that issue is encompassed by the appeal now pending in the Eleventh Circuit Court of Appeals.

In United States v. Wecht, the grand jury returned an indictment on January 20, 2006, and trial is now set for January 28, 2008. Dr. Wecht is charged in 84 counts with using government resources for his private gain and defrauding his private clients in violation of 18 U.S.C. §§ 1341, 1343, 1346, and 666. Although trial was originally scheduled for October 2006, a date requested by Dr. Wecht, this initial trial date was stayed by the U.S. Court of Appeals for the Third Circuit while it considered the government's interlocutory appeal of an order unsealing certain personnel records of an agent involved in the investigation.

Enclosed are publicly-available materials which provide background on the government's position in the Wecht case. These materials also serve to correct several factual inaccuracies which appear in your letter about this case. First, your letter states that the U.S. Attorney's Office "urged the courts to set the trial in October, 2006, a month before the congressional elections," and that the trial was postponed "only after the federal appeals court agreed to hear motions by Dr. Wecht's attorneys." Both allegations are demonstrably inaccurate. The enclosed transcript, dated February 10, 2006, states:

> **Mr. Johnson [Dr. Wecht's counsel]**: One thing that will determine when it would be timely to go to trial from the standpoint of the defense will have to do with discovery because there will be a certain amount of discovery that we need before we can file pretrial motions, number one . . . I think that we would probably not be ready to go to trial, based on our need to review the documents and file motions, until at the very earliest September. . . .

The Court: Then I would also like your proposed order to choose one of these trial dates with the knowledge that you have got to hold this date . . . So the first date you get is September 5th. Second date you get is September 11th. The third date you get is October 17th. Does the Government need more than those three dates?

Mr. Stallings [Government counsel]: No, your Honor. Either of those would be fine.

The Court: You don't need -- you just have to work together. Are those sufficient dates for the Defendant to pick a date that works?

Mr. Johnson: They are, your Honor, yes, Sir.

Subsequently, Dr. Wecht's counsel, not the government, selected the October 2006 trial date, which was embodied in a joint pretrial order filed on March 1, 2006. Moreover, Dr. Wecht never filed a motion to continue the trial. Instead, the government, Dr. Wecht, and third party media outlets filed various interlocutory appeals. The Third Circuit, on its own initiative, stayed the trial in connection with the government's appeal and the media outlet's appeal, not the defendant's interlocutory matter. (See District Court Order, dated June 14, 2007, stating "Defendant sought, but did not receive, from the Court of Appeals, a 'stay [of] district court proceedings pending disposition of petition for writ of mandamus.' Instead, the Court of Appeals stayed only the trial, and the Court's stay order was not filed at that Court's case number for defendant's mandamus action (06-3704), but only at the case numbers for the other related appeals.").

Your letter also alleged that the U.S. Attorney's Office "intended to arrest Dr. Wecht and subject him to a 'perp walk,' even though Dr. Wecht and his lawyers repeatedly offered to self-surrender," and suggested that only the intervention of the Deputy Attorney General convinced the U.S. Attorney to reassess this decision. As court filings demonstrate, this allegation is inaccurate. On January 18, 2006, First Assistant U.S. Attorney Robert Cessar informed Dr. Wecht's then-counsel, J. Alan Johnson, that Dr. Wecht would be issued a summons to appear, not arrested on a warrant. (See Cessar affidavit ¶¶ 6-7). However, Dr. Wecht does not claim to have contacted the Office of the Deputy Attorney General about this issue until January 19, 2006. Id.

Finally, the sole source cited in your letter to support the allegations of a threatened arrest and "perp walk" is an article quoting extrajudicial statements of Dr. Wecht's counsel. The district court has since referred the matter of counsel's extrajudicial statements in the case to the Disciplinary Board of the Supreme Court of Pennsylvania for a determination of whether they violate the Rules of Professional Conduct. (See District Court Order, dated June 20, 2007). Indeed, as demonstrated in the attached filings, a significant concern in this case has been defense counsel's repeated extrajudicial statements, and not the single announcement made by the U.S. Attorney upon Dr. Wecht's indictment.

With respect to your inquiry regarding United States v. Georgia Thompson, Ms. Thompson, a former official in the State of Wisconsin Department of Administration, was tried and convicted by a jury of honest services mail fraud (18 U.S.C. §§ 1341 and 1346) and misapplication of funds (18 U.S.C. § 666). As you know, the United States Court of Appeals for the Seventh Circuit recently issued a written opinion reversing the conviction and entering a judgment of acquittal. We appreciate the Committee's interest in information about the decision to prosecute in this case, and the U.S. Attorney, Steven Biskupic, is prepared to provide an informational, untranscribed briefing to Committee staff and answer their questions about that matter. This briefing can be scheduled at a mutually convenient time in the near future.

In response to your request, we searched for responsive documents in the U.S. Attorney's Office in the Eastern District of Wisconsin, the Executive Office for U.S. Attorneys (EOUSA), the Criminal Division, the Office of the Attorney General, and the Office of the Deputy Attorney General. As we have discussed with Committee staff, the U.S. Attorney's Office has advised that the documents responsive to your request for memoranda and other materials concerning the Thompson case are voluminous and the processing of those materials would require an extensive commitment of resources and time. They include pleadings, exhibits, correspondence, briefs, legal memoranda, transcripts, appellate materials, discovery documents, and other records, many of which are publicly filed and available through the PACER docketing system. We could process these documents if necessary, but given their volume and ready availability on PACER, the Committee may prefer to obtain them from that source.

In addition to the foregoing and the documents already provided to the Committee on May 17, 2007, enclosed are 27 pages of documents responsive to your request. We have redacted information that would implicate the privacy interests of Department of Justice employees, such as the names of technical support staff who conducted the searches in response to your request. We have also redacted non-public information about matters unrelated to the Thompson case and a small amount of text that implicates the privacy interests of staff in the U.S. Attorney's Office. We have also not included documents which contain grand jury information, pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure. As previously indicated, our search has not located documents containing communications from White House staff, Members of Congress, congressional staff, or state and local political party officials and their staff related to this matter

Our search for materials responsive to your request concerning the Georgia Thompson case yielded a number of other documents which we believe reflect deliberations and communications implicating substantial confidentiality interests of the Department. These include U.S. Attorney Biskupic's notes and one letter written in the course of the investigation memorializing conversations with attorneys of persons of interest who were not indicted; pre-indictment documents, including emails, letters, and memoranda, regarding the resolution of a potential conflict of interest which arose concerning individuals who were investigated, but never indicted;

and a memorandum from U.S. Attorney Biskupic to the Criminal Division requesting authorization to issue a media subpoena pursuant to 28 C.F.R. § 50.10, and a subsequent 2-page email on this topic.

We hope that the documents we are presently producing, in addition to an untranscribed briefing provided by U.S. Attorney Biskupic, will satisfy your inquiry. However, we are prepared to confer with Committee staff if you have further information needs. Please do not hesitate to contact this office if we may be of further assistance on this or any other matter.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Lamar Smith
Ranking Minority Member

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee

The Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee

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July 17, 2007

The Honorable Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Dear Mr. Attorney General:

As you are well aware, the bedrock principle of our federal criminal system is that justice must be served objectively, on a non-partisan basis, and without fear or favor. Our investigation into the U.S. Attorneys scandal, however, has raised serious concerns about efforts to undermine this basic principle. Because of these concerns, and in order to further our investigation, we ask that you provide us with certain critical documents and information relating to U.S. Attorney's offices that may have initiated prosecutions against public officials and others based on their political affiliation.

Evidence suggests that at least some of the nine terminated U.S. Attorneys were forced out due, in part, to their reluctance to pursue charges against Democratic officials, or their willingness to move forward in investigating or prosecuting Republican officials. On the other hand, while a number of other U.S. Attorneys were considered for termination, most were retained and described as "loyal Bushies." During the course of our investigation, moreover, serious allegations have been made that some U.S. Attorneys who were not terminated, engaged in selective and improper targeting of Democrats for prosecution.

Concerns regarding politically based, select prosecutions have been raised by a recent academic study by Messrs. Shields and Cragan that found federal prosecutors during the Bush Administration have indicted Democratic officeholders far more frequently than their Republican counterparts.[1] The study identified 375 investigations and/or indictments of candidates and

[1] DONALD C. SHIELDS & JOHN F. CRAGAN, THE POLITICAL PROFILING OF ELECTED DEMOCRATIC OFFICIALS: WHEN RHETORICAL VISION PARTICIPATION RUNS AMOK (2007), *available at* http://www.epluribusmedia.org/columns/2007/20070212_political_profiling.html

elected officials brought by U.S. attorneys since 2001.[2] The study's authors found that of the 375 cases they identified, 10 involved independents, 67 involved Republicans, and 298 involved Democrats.[3] The authors noted that the greatest partisan disparity in investigations and/or indictments involved local politicians, where Democrats were seven times as likely as Republicans to be subject to criminal charges from the Department of Justice.[4]

Allegations that even one of the nation's 93 U.S. Attorneys is improperly prosecuting or failing to prosecute Democratic officials based on their political affiliation have the potential to taint and undermine the legitimacy of our entire criminal justice system. In fact, the perception that U.S. Attorney's offices are improperly exercising their prosecutorial powers in a partisan manner is already leading to an increase of motions in court by defense counsel. The Los Angeles Times recently reported that several defense attorneys are citing the allegations of selective prosecution as evidence that federal prosecutors are bringing criminal charges based upon improper political motives.[5] These defense attorneys allege that prosecutors consider a target's political affiliations when deciding whether or not to issue indictments.[6]

In order to assure the public that everyone, no matter their political affiliation, is treated equally under the law, we are initially requesting documents relating to the Department's handling of three cases, and in particular any memoranda, analysis, or other communications discussing whether and to what extent criminal charges should be and were pursued against the individuals listed below. Additionally, with regard to these prosecutions, we are requesting any memoranda, analysis, or other communication from any White House staff, members of congress or their staff, and any state or local political party officials or their staff.

- The 2006 conviction of Alabama's former Democratic Governor Don Siegelman for bribery, conspiracy, and mail fraud has raised serious concerns. Mr. Siegelman was indicted in 2004, two years after losing the governor's race by a mere 3,200 votes in the closest governor's election in Alabama state history. In May, 2007, Jill Simpson, a

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[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] Richard B. Schmitt, *Attorney firings echo in courts*, L.A. TIMES, June 18, 2007, at A1.

[6] *Id.*

Republican attorney in Alabama who had worked for Mr. Siegelman's 2002 Republican opponent, swore in an affidavit that in 2002, a former protégé of Karl Rove told a small group of Republican political operatives that Karl Rove and two U.S. Attorneys in Alabama were working to "take care of" Mr. Siegelman.[7] The Rove protégé, Bill Canary, is married to Leura Canary, who President Bush appointed in 2001 to be the U.S. Attorney in the Middle District of Alabama. In 2005, the U.S. Attorney's Office in the Middle District of Alabama indicted Mr. Siegelman (Ms. Canary recused herself from participating in the Siegelman case in 2002). In her affidavit, Ms. Simpson said that Bill Canary told her and two colleagues that "Karl [Rove] had spoken with the Department of Justice and the Department was already pursuing Don Siegelman."[8] The phone call that Ms. Simpson was referring to occurred in November, 2002, when Mr. Siegelman was seeking a recount of the vote he had just lost, and when Republican operatives were concerned that Mr. Siegelman could be a significant political threat in future elections.[9]

There have been several reported irregularities in the case against Mr. Siegelman that raise questions about his prosecution. In 2004, charges against Mr. Siegelman were dropped by the U.S. Attorney's Office in the Northern District of Alabama before the case went to trial, and the judge harshly rebuked prosecutors bringing that case.[10] In the RICO case filed in the Middle District of Alabama in 2005, there have been allegations of jury tampering involving two of the jurors who convicted Mr. Siegelman.[11] These and other irregularities prompted 44 former state attorneys general to sign a petition "urging

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[7] Jill Simpson, Affidavit at 3. The participants in the conversation described in the Simpson affidavit have challenged Simpson's allegations in their responses to news organizations. U.S. Attorney Leura Canary has maintained that due to her recusal, she had no role in the charging decision around Siegelman. She has also insisted that the initial investigation was not prompted by her political ties. Without access to the requested documents, the Judiciary Committee is not in a position to evaluate their competing factual claims or to judge the veracity of any of these parties.

[8] *Id.*

[9] *Id.*

[10] Adam Zagorin, *Rove Named in Alabama Controversy,* TIME, June 1, 2007.

[11] Patricia C. McCarter, *Sentencing Siegelman,* HUNTSVILLE TIMES, June 25, 2007.

the United States Congress to investigate the circumstances surrounding the investigation, prosecution, sentencing and detention" of Mr. Siegelman.[12]

- On April 5, 2007, the Seventh Circuit Court of Appeals, citing "evidence [that] is beyond thin," threw out the federal conviction of Georgia Thompson, a Wisconsin state procurement officer.[13] The office of the U.S. Attorney in Wisconsin, Steven Biskupic, had won a jury conviction of Ms. Thompson, claiming the career civil servant impermissibly awarded a contract to a travel agency whose director was a political contributor to Democratic Governor Jim Doyle. The U.S. Attorney proceeded with the prosecution even though the travel agency that won the contract submitted the lowest bid, and tied for first place on the complicated merit score that ranked all contract bidders. Additionally, there was no evidence that Ms. Thompson was aware of or interested in the political contributions by the head of the travel agency.[14]

  Steven Biskupic's name appeared on a March, 2005, list that was compiled by Department of Justice staff which named U.S. Attorneys who could potentially be ousted. In January, 2006, Mr. Biskupic indicted Ms. Thompson; that same month, Mr. Biskupic's name had been removed from the DOJ list of U.S. Attorneys who might be replaced. After Ms. Thompson's conviction in June, 2006, the campaign of Gov. Doyle's Republican opponent, U.S. Representative Mark Green, seized on the conviction as a means to paint Gov. Doyle as corrupt.[15] The Court of Appeals, finding that no crime had been committed, acquitted Ms. Thompson, declaring her "innocent," but of course, the political damage had been done and could not be rectified.

  On April 10, 2007, Senate Judiciary Committee Chairman Patrick Leahy and several other senators requested documents regarding the Georgia Thompson case, including documents regarding contacts between White House personnel, Main Justice, or outside parties and the United States Attorney's office handling the prosecution. Our Committee

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[12] Letter from 44 former state attorneys general, to John Conyers, Jr., Chairman, Committee on the Judiciary, and Patrick Leahy, Chairman, Senate Judiciary Committee (July 13, 2007) (on file with the Committee on the Judiciary).

[13] U.S. v. Thompson, 484 F.3d 877 (7th Cir. 2007).

[14] *Id.* at 878.

[15] Bill Lueders, *Biskupic tried to 'squeeze' Georgia Thompson: U.S. Attorney's office made offers of leniency, tied to her testifying against others*, ISTHMUS, May 17, 2007, *available at* http://www.thedailypage.com/isthmus/article.php?article=7081.

joined that request the following day.[16] On May 17, 2007, Principal Deputy Assistant Attorney General Richard Hertling responded by producing some documents relevant to other requests made in that letter, but did not produce any documents regarding the Thompson case.[17] Mr. Hertling explained that "processing [the Thompson] documents would require an extensive commitment of resources and time."[18] Mr. Hertling's letter further noted that the Department was in the process of searching for evidence of communications between Main Justice and the local U.S. Attorney's office, and that he expected 'that there were [such] communications during the investigation and prosecution of the case."[19] Finally, Mr. Hertling's letter explained that the search for relevant communications regarding the Thompson case continued in "the Criminal Division, the Office of the Attorney General, and the Office of the Deputy Attorney General."[20] The two months that have passed since Mr. Hertling's letter have not assuaged our concerns regarding the Thompson prosecution, and we are renewing our request that the documents related to that matter be promptly produced as well as the other documents requested in this letter.

- The prosecution of Dr. Cyril Wecht in the Western District of Pennsylvania by U.S. Attorney Mary Beth Buchanan has also engendered controversy. It has been alleged that the case of Dr. Wecht, a prominent 75-year old Democrat who was the coroner in Allegheny County, is indicative of other prosecutions in the Western District - since 2001, the U.S. Attorney has never indicted a Republican official, and has only prosecuted officeholders who are Democrats.[21] Dr. Wecht, a world renowned forensic pathologist and television commentator, was charged with misusing his office and personally enriching himself by, among other things, striking a deal with a local university to trade

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[16] Letter from Patrick Leahy, Chairman, Senate Judiciary Committee, et. al., to Alberto Gonzales, Attorney General, U.S. Department of Justice (April 10, 2007) (on file with the Committee on the Judiciary).

[17] Letter from Richard Hertling, Principle Deputy Attorney General, U.S. Department of Justice, to Patrick Leahy, Chairman, Senate Judiciary Committee (April 10, 2007) (on file with the Committee on the Judiciary).

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Mary Beth Buchanan, Interview with House Committee on the Judiciary, at 145-6.

unclaimed cadavers for university lab space.[22] Claiming Dr. Wecht was a flight risk, Ms. Buchanan advised his defense lawyers, including former Attorney General Richard

Thornburgh, that her office intended to arrest Dr. Wecht and subject him to a "perp walk," even though Dr. Wecht and his lawyers repeatedly offered to self-surrender and voluntarily appear in court to be arraigned.[23] Reportedly only after former Attorney General Thornburgh spoke with Deputy Attorney General Paul McNulty did Ms. Buchanan agree not to arrest Dr. Wecht and subject him to a "perp walk." In court filings, Dr. Wecht alleges that Ms. Buchanan's office inflamed the press by making inappropriate statements.[24] The U.S. Attorney's office urged the courts to set the trial in October, 2006, a month before the congressional elections; the case was postponed only after the federal appeals court agreed to hear motions by Dr. Wecht's attorneys. Yet U.S. Attorney Buchanan has not brought charges against at least two Republican officials who, like Dr. Wecht, are alleged to have misused their office staff.[25]

While the above cases are by no means an exhaustive list of all alleged instances of politically-motivated prosecutions or lack of prosecutions, we believe that learning the truth about these three prosecutions is an important step in the process of restoring the Department of Justice's credibility and reputation for impartial justice.

We appreciate your attention to this matter and ask that you provide these documents to us by Tuesday, July 27, 2007 at 10:00 a.m. Please direct your responses and questions to the staff at the House Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680).

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[22] Paula Reed, *Motive of Wecht deal talks questioned,* PITT. POST-GAZETTE, June 7, 2007.

[23] *Id.*

[24] U.S. v. Wecht, 484 F.3d 194, 198 (3d Cir. 2007).

[25] Thomas J. Farrell, Op-ed, *Our U.S. Attorney should resign,* PITT. POST-GAZETTE, Mar. 20, 2007.

The Honorable Alberto R. Gonzales
Page Seven
July 17, 2007

Sincerely,

John Conyers, Jr.
Chairman

Linda T. Sanchez
Chairwoman, Subcommittee on Commercial and Administrative Law

Tammy Baldwin
Member, Committee on the Judiciary

Artur Davis
Member, Committee on the Judiciary

cc: The Honorable Lamar S. Smith
The Honorable Chris Cannon

JOHN CONYERS, JR., Michigan
CHAIRMAN

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KEITH ELLISON, Minnesota

ONE HUNDRED TENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6216
(202) 225–3951
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STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio

September 10, 2007

The Honorable Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Mr. Attorney General:

We are writing to follow up on our July 17, 2007, letter concerning the issue of selective or politically-motivated prosecutions, in light of Principal Deputy Assistant Attorney General Brian A. Benczkowski's letter to us of September 4, 2007. We were very disappointed that Mr. Benczkowski largely rejected our request for documents that would shed light on the Department's decisionmaking in three cases where concerns have been raised that prosecutorial decisions were influenced by improper political factors: United States v. Don Siegelman, United States v. Georgia Thompson, and United States v. Cyril Wecht. We urge that you immediately take steps to ensure that the Department fully cooperates with our request, so that these troubling concerns about political influence in prosecutorial decisionmaking and the reputation of the Department of Justice can be effectively resolved.

Our request does not arise in a vacuum. The Committee's investigation into the firing of nine U.S. attorneys in 2006 has surfaced substantial evidence that improper political pressure has been brought to bear on the U.S. Attorney corps, and that prosecutors who did not serve the Administration political goals were fired while others who were dubbed "loyal Bushies" were retained.[1] Since our original letter, even more evidence has come to light showing an aggressive effort run by White House political operatives to use the machinery of government for partisan advantage and establishing that top members of your staff attended political briefings led by Karl

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[1] See July 24, 2007, Memorandum from Chairman Conyers to Members of the Committee on the Judiciary re Consideration of Report of the Refusal of Former White House Counsel Harriet Miers and White House Chief of Staff Joshua Bolten to Comply With Subpoenas By the House Judiciary Committee.

Rove.[2] Also in the time since our original letter, public concern and information about the issue of selective or politically-motivated prosecutions has only increased.[3]

Against this backdrop, the Committee has identified a number of cases where substantial questions of political interference have been raised. Of these cases, we have so far limited our request for information to only the three matters referenced in our July 17, 2007, letter. Each of these cases raises substantial, particularized concerns about the role of politics in the exercise of prosecutorial power and whether any of these defendants were targeted for partisan reasons. Needless to say, it is extremely disappointing that the Department has responded by producing only a handful of relevant documents and by focusing its energies on arguing the facts of these cases.

The few materials that the Department has provided are clearly insufficient. You have offered approximately 350 pages of public pleadings, but even this production has been limited to pleadings that represent *the Government's* position in those matters. We understand that the Committee may obtain publicly filed documents from the courts without the Department's assistance, but we question the value of the Department selectively providing those few pleadings supporting its arguments but not providing any responsive pleadings or court decisions that present contrary arguments and facts.

Far more important, Mr. Benczkowski's blanket refusal to provide materials deemed "deliberative" such as prosecution memoranda, even as to closed matters, and his refusal to provide any non-public materials concerning matters that have not been closed, is unacceptable. While the Committee appreciates the sensitivity of these materials, and we are open to reasonable accommodations of those concerns, as described below, we believe it is improper to simply declare such materials off limits, particularly in view of the substantial questions that have been raised about the Department's action in these cases. While Mr. Benczkowski's letter recites the Department's "longstanding" position, relying on a statement by the White House counsel made in 2002, in fact Congress repeatedly has obtained prosecution memoranda and other deliberative materials of the Department regarding both open and closed criminal matters during past

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[2] See Solomon, MacGillis & Cohen, *How Rove Directed Federal Assets for GOP Gains*, Washington Post, August 19, 2007; Eggen & Kane, *Gonzales Now Says Top Aides Got Political Briefings*, Washington Post, Aug. 4, 2007.

[3] See, e.g., Savage & Hamburger, *In Chertoff's Record, Shades of Politics*, Los Angeles Times, Sept. 4, 2007; Editorial, *Selective Prosecution*, New York Times, Aug. 6, 2007.

Congressional investigations.[4] Indeed, this Administration ultimately agreed to make available to Congress prosecution memoranda that were at issue when the White House counsel made the statement quoted in Mr. Benczkowski's letter. Such documents, which dealt with prosecution decisions in murder cases and related issues, and which the Department claimed were related to ongoing litigation, were made available to Congress despite being subject to a formal claim of executive privilege by President Bush, on terms negotiated by then-Assistant Attorney General Michael Chertoff and the then Government Reform Committee staff.[5]

Other examples are plentiful. As early as the Teapot Dome scandal in the 1920s, under Attorney General (and later Chief Justice of the United States Supreme Court) Harlan Stone, a Senate Select investigative committee received broad access to Department files, including investigative reports, recommendations for prosecutorial action, and testimony of investigating agents and attorneys.[6] A great deal of deliberative and investigative material, including "predicate documents relating to the opening of the investigation and prosecution of" an EPA official, were made available to this Committee during Chairman Rodino's investigation into the Department's role in the EPA's decision to withhold documents from Congress, which helped lead to the citation of EPA Administrator Ann Gorsuch Burford for contempt of Congress.[7] And in the aftermath of the Ruby Ridge shootings, Congress received core deliberative materials

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[4] See Statement of Morton Rosenberg, Specialist in American Public Law, Congressional Research Service, Before the House Committee on Government Reform Concerning The History of And Basis For Congressional Access to Deliberative Justice Department Documents, Feb. 6, 2002 (containing a detailed Appendix listing "18 significant Congressional investigations of the Department of Justice which involved either open or closed investigations in which the Department agreed to supply documents pertaining to those investigations, including prosecutorial decisionmaking memoranda and correspondence, and to provide line attorneys and investigative personnel for staff interviews and for testimony before committees").

[5] Everything Secret Degenerates: The FBI's Use of Murderers As Informants, Third Report of the Committee on Government Reform, 108th Congress, 2d Session, Report 108-414, Vol. 1, at 132-33.

[6] Investigation of Hon. Harry M. Daughtery Before the Senate Select Committee on Investigation of the Attorney General, vols. 1-3, 68th Congress, 1st Session, 1924; Rosenberg, supra, at CRS-4 to CRS-7.

[7] Rosenberg, supra, at CRS-7 to CRS-10.

reflecting the Department's prosecutorial and other decisions arising out of those shootings.[8] There is thus ample precedent for production or review of the materials requested by the Committee.

Let us be clear. We have not prejudged the outcome of our investigation. However, without meaningful cooperation from the Department, including access to materials that would reflect the decisionmaking process that led to the indictment of these individuals, it will simply be impossible to make fair judgments or to allay suspicions that improper factors played a role in these and other cases. Accordingly, we must reiterate our request for access to relevant materials that you have so far declined to provide, such as: (i) case impression and prosecution or declination memoranda, including drafts, and notes or emails discussing same, (ii) indictment review files/memoranda, and notes or emails discussing same, (iii) discovery correspondence, (iv) FBI 302s and other witness interview records or memoranda, (v) witness immunity agreements and Giglio materials, (vi) Brady materials, and (vii) any other emails or documents discussing the strengths, weaknesses, merits, wisdom, or political implications of these prosecutions.

As stated above, we recognize the sensitivity of some of the requested materials, and appreciate the Department's interest in preserving the confidentiality of its internal deliberations on prosecution matters. To accommodate those concerns, we are prepared to agree that, instead of the Department producing all the requested materials to the Committee, Committee members and staff would review the most sensitive materials on Department premises, assuming mutually agreeable conditions of reasonable access can be arranged. Such procedures have been used in the past for sensitive executive branch materials, such as some internal Department investigation records relevant to the U.S. Attorney firings and White House materials relevant to the death of Corporal Pat Tillman and the Administration's public statements on that subject. We also are open to your offer of a briefing from U.S. Attorney Biskupic regarding the Georgia Thompson prosecution, but such a briefing would not be productive until the Committee has had a reasonable opportunity to review the documents and memoranda possessed by the Department that are relevant to that case but which have not been produced.

As a primary reason for declining to provide the information that we have requested, Mr. Benczkowski's letter states that "We want to avoid any perception that the conduct of our criminal investigations and prosecutions is subject to political influence." This concern should

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[8] Ruby Ridge: Report of the Subcommittee on Terrorism, Technology and Government Information of the Senate Committee on the Judiciary, 104th Congr., 1st Sess. (1995).

The Honorable Alberto R. Gonzales
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lead to precisely the opposite result. Due to the events and revelations of recent months, the "perception that the conduct of our criminal investigations and prosecutions is subject to political influence" already exists, and a refusal to cooperate with the Committee's investigative efforts can only reinforce it. To carry out the pledge that you and others have made to help move the Department forward past these difficult issues and begin the long process of restoring the Department's reputation and credibility, we urge you and all present and future Department officials to cooperate with our efforts, and to provide the materials we have requested on a voluntary basis.

Thank you in advance for your prompt cooperation.

Sincerely,

John Conyers, Jr.
Chairman

Linda T. Sánchez
Chair, Subcommittee on Commercial and Administrative Law

Artur Davis
Member, Committee on the Judiciary

Tammy Baldwin
Member, Committee on the Judiciary

cc: Hon. Brian A. Benczkowski
Hon. Lamar S. Smith
Hon. Bobby Scott
Hon. Chris Cannon
Hon. J. Randy Forbes

SENATE OF THE COMMONWEALTH OF PUERTO RICO

Jorge de Castro Font
Senator at Large

Chairman
Committee on Rules and Calendar
Committee on the Judiciary
Committee on Municipal and Financial Affairs

October 11, 2007

Honorable John Conyers, Jr.
Chairman
Committee of the Judiciary
U. S. House of Representatives
2426 Rayburn Building
Washington, DC 20515

Dear Mr. Conyers:

This is to respectfully submit to you our findings related to the acts of Mr. Eduardo Bhatia, Executive Director of the Puerto Rico Federal Affairs Administration in Washington, D.C. (hereinafter "Mr. Bathia") pertaining to the appointment and consideration of Ms. Rosa Emilia Rodriguez as Attorney General for the District of Puerto Rico (hereinafter "Ms. Rodriguez").

As Chairman of the Committee of the Judiciary of the Senate of Puerto Rico, and under the instructions of Mr. Kenneth McClintock, President of the Senate of Puerto Rico, we evaluated the participation of Mr. Bathia in the above referenced matter. We concluded that Mr. Bathia used his position and public funds to attack the aforementioned appointment of Ms. Rodriguez.

Furthermore, we concluded that Mr. Bathia's attack was based purely on political reasons and not based on any findings of wrongdoing by Ms. Rodriguez, who, as a matter of fact, has a long and impeccable trajectory as a public official.

For the above stated reasons, we respectfully ask you to take our findings into consideration when evaluating the complaint filed by Mr. Bathia at your office to investigate the acts of Ms. Rodriguez through the ongoing investigation of Governor Aníbal Acevedo-Vilá in relation to alleged illegal campaign funds received by Mr. Acevedo-Vilá.

For your files and evaluation, attached hereto please find a copy of our final report on to this matter.

Thanking you in advance for your time and attention to this matter, we remain.

Cordially,

JORGE DE CASTRO FONT

P.O. Box 9023431 San Juan, Puerto Rico 00902-3431 Tels. (787) 722-1231, 722-4019

AFFIDAVIT

Roderick F. Mollison, first duly sworn on oath, deposes and says:

1. That he is an attorney at law, licensed to practice in the State of Illinois since November 6, 1973, and the United States district Courts since December 11, 1973, that he is one of the attorneys of record for Louis Marin, a co-defendant in ***United States v. Marin, Palivos***, et al., 00 CR 1065, in the Northern District of Illinois.

2. That on or about November 5, 2002, as counsel for Louis Marin, affiant caused to be prepared and filed in Marin's behalf a motion to dismiss the indictment against Marin and a motion to suppress certain testimony taken from Marin, by government agents, on September 19, 2001, in the form of a written statement.

3. That commencing December 2002, through February 2003, affiant had a number of telephone conversations with Mr. Eric Wilson, an assistant U.S. Attorney concerning the Marin case, in particular, a conversation concerning the then pending motion to suppress.

3. That on or about said date, Mr. Wilson stated to the affiant that the affiant should be indicted for obstructing justice for filing the motion to suppress, whereupon affiant asked Mr. Wilson if he proposed to prosecute his case against Marin by indicting the defense lawyers, whereupon Mr. Wilson repeated that the affiant should be indicted for obstructing justice if he proceeded to hearing on the motion to suppress.

4. A number of discussions ensued subsequently between the affiant and Mr. Wilson concerning the Marin case, and the threat of indictment was not repeated by Mr. Wilson, nor has the affiant ever been indicted for obstructing justice.

Further affiant sayeth nought, save that this affidavit is made at the request of, and in behalf of, Mr. Peter Palivos, a co-defendant with Louis Marin.

RODERICK F. MOLLISON

Subscribed and Sworn to
before me this 5th day
of January, 2006.

Christine Wegrecki
Notary Public

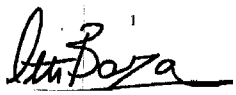
OFFICIAL SEAL
CHRISTINE WEGRECKI
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:05/15/08

Country of Greece)
Province of Tripoli)

AFFIDAVIT:

I, Peter G. Bouzanis, swear that the following is true and accurate:

1. I have been living in Europe since 11/14/2000 and I am currently a resident of Tripoli Greece.
2. I have filed with the A.R.D.C. complaints against Mr. Wilson, Mr. Hogan and Mr. Samuels because they have committed prosecutorial misconduct an have violated the attorney ethics code by lying. The A.R.D.C. has started investigations against them their case numbers respectively 04 CI 4214, 04 CI 4215 and CI 04 4216.
3. That on 4/24/96 I purchased the Waterfalls Restaurant and property from JACPG Inc. and its three shareholders Chris Katris, John Katris and George Palivos (hereinafter the "Waterfalls transaction").
4. That the three attorneys who represented me during the Waterfalls transaction were Nick Black (See the attached Exhibit 1, SBA attorney disclosure sheet that I gave the Moneystore), David Geocaris and Dean Kalamatianos.
5. The person who put together the whole Waterfalls transaction was Nick Black. Nick Black had previously represented me and my family in several other real estate and restaurant transactions.
6. Attorneys Black and Kalamatianos did not disclose to the sellers or to me that they were representing both parties in the Waterfalls transaction.
7. That the 3/14/96 Moneystore commitment letter to me does not state two things:
   A. That I, Peter Bouzanis had to inject 398,000 USD. This would have violated SBA rules. It just states that "It" must be injected.; and,
   B. That this letter does not state in words or meaning that my money had to be "unencumbered" or not borrowed. This would have been violated SBA rules. (See attached Exhibit 2, 3/14/96 Moneystore commitment letter).
8. I closed on the Waterfalls restaurant on April 26, 1996.
9. Sometime after the closing a criminal investigation was started. Criminal subpoenas were issued in October of 2000.
10. One week before 11/14/00, I met with Nick Black. At that time, Nick Black told me that he had received a subpoena to produce the Waterfalls transaction documents, and that he had with him a copy of the Waterfalls documents which he told me he was going to produce to the government. Nick Black also told me that he wanted me to have a copy of the same documents that he was going to produce to the government because I was his client. Thereafter, Nick Black gave me 73 pages of documents. I sent a copy of all these documents prior to trial to the government. Two hand written notes that were questioned by the government when they were created were part of these documents when Nick Black gave me the file.
11. On September 6, 2001 and September 7, 2001 A USA Wilson. Agent Heinzer and Agent Bray took my proffer in London, England. At that time, in a one on one conversation, AUSA Wilson told me that he wanted me to give a false statement. AUSA Wilson told me that if I agreed to give that false statement, I would at minimum get probation. Thereafter, AUSA Wilson directed me to say the following falsehoods - that George Palivos put the Waterfalls transaction together, when in fact, it was Nick Black; that Peter Palivos was involved in the Waterfalls ' transaction, when in fact, Peter Palivos was not involved in anything; that the P



in JACPG Inc. stood for Peter Palivos, when in fact I did not know what the P in JACPG Inc stood for; that the Moneystore did not know that I was borrowing the down payment money from the Sellers, when in fact, the Moneystore knew that I was borrowing the down payment money from the Sellers. that the Waterfalls transaction involved a fictitious dispute, when in fact, there was a legitimate dispute between me and the Sellers; and that after the Waterfalls transaction closing I gave to Peter Palivos a $25,000 check that he had loaned to me, when in fact, I gave a signed $25,000 blank check to George Palivos for payment of $25,000 in Waterfall inventory.

12. That the Waterfalls trial started on September 16, 2003, prior to the start of the Waterfalls trial, my Greek attorney, Sotirios Bregiannos , sent to the U.S. Department of Justice and AUSA Hogan a copy of all the Waterfalls documents that I had in my possession as of one week before November 14, 2000 the date that I left the USA. In the documents Mr. Bregiannos sent the US Justice Department and Mr. Hogan there were copies of two handwritten notes that Nick Black had given to me on our meeting of one week before I left for England, on November 14, 2000. These two notes are pages 5 and 6 of the 73 page file that Black gave me. (Attached please find exhibit 3, copies of page 5 and 6 of this file and my attorney's letter to the US Justice Department in Washington dated September 8, 2003).
13. In the middle of the Waterfalls trial, on September 26, 2003 at 23:56 and 23:58 hours, I received two telephone calls from AUSA Hogan. Thereafter, I had two conversations with AUSA Hogan. The two conversations lasted 59 seconds and 10:13 minutes respectively. Those two telephone conversations are confirmed by a phone bill I received from the 'Forth Net' Telephone Company. (A copy of that phone bill is attached as exhibit 4).
14. During the second 9/23/03 telephone conversation which lasted 10:13 minutes, I called AUSA Hogan at the US number, 1(312) 886-3389 which AUSA Hogan identified as his phone number. During our 10:13 minute telephone conversation, AUSA Hogan emphasized that our conversation was "completely confidential". I asked AUSA Hogan what did 'completely confidential' mean. AUSA Hogan responded that 'completely confidential' meant that he was not going to disclose our telephone conversation or the substance of our conversation to anyone. Therefore, AUSA Hogan told me that if I agreed to return to the United States in order to 'cooperate and testify' in the Waterfalls trial, I was not to tell my Greek attorney, the judge, the jury or any of the defense attorneys about our telephone conversation. Thereafter, during that same conversation AUSA Hogan explained to me that 'cooperation' meant that I had to return to Chicago so that I could testify falsely about Peter Palivos, who would be the focus of my 'cooperation.' AUSA Hogan explained to me that if I agreed to say that Peter Palivos was involved in the Waterlalls transaction, when in fact, Peter Palivos was not involved in the transaction, AUSA Hogan would recommend a 50% downward departure at sentencing, which would guarantee me a lenient sentence of no more than 12-18 months in prison. I informed AUSA Hogan that I would not lie as he wanted me to lie, but, I was willing to give a truthful evidence deposition from Greece via satellite. At that point, AUSA Hogan told me "That will never happen. You have only two choices. – either, return to Chicago and testify as I want you to testify or you should learn to like living in Greece because I will not let you return to the United States", I replied that I was not going to lie. At that point, AUSA Hogan got upset and he slammed the phone on me.
15. That I have not spoken to anyone from the U.S, Attorney's Office since the 9/26/03 telephone hang up.
16. That shortly after the Waterfalls trial concluded. I found out that AUSA Hogan made Nick Black falsely testify that Nick Black created the two handwritten notes, which are pages 5 and 6 of the attached file Black gave me, on November 14, 2000 or November 15, 2000. Mr. Black's aforesaid trial testimony was false. The same two handwritten notes were in the file

that Nick Black gave to me one week before I left the USA on November 14, 2000 (A day I remember well because it was my birthday). I had copies of the same two notes in my possession, from then to the present. AUSA Hogan and the U.S. Justice Department knew this since my attorney sent them a copy of this file prior to the trial's beginning.

17. That since I refused to falsely testify against Peter Palivos, AUSA Hogan has repeatedly portrayed me as a fugitive who is avoiding justice. That portrayal is inaccurate because I am willing to try my case. Therefore, thru attorney Sotirios Breglannos, I have asked the Greek Justice Department to request that the U.S. Justice Department transfer my case to Greece under the Hellenic-USA treaty on Mutual Legal Assistance in Criminal Matters. I have informed Mr. Hogan and the Justice department of the above.
18. After the Waterfalls case is transferred to Greece, I will proceed to trial. I want my case tried in Greece because prosecutors Eric Wilson and Bill Hogan have created false facts, crimes and have lied to the grand jury, witnesses, Judge Lofkow and jury. These prosecutors have also caused witnesses to lie under oath. Therefore unless and until these prosecutors are held accountable for their lies, I do not believe I can have a fair trial in the United States.

I Peter G. Bouzanis sign this under oath that the above is true and accurate.

Peter G. Bouzanis

Mr. Bouzanis signed this statement in front of me on this 21st day of January, 2005.

STATE OF ILLINOIS)
)
COUNTY OF COOK)

AFFIDAVIT

Peter Kopsaftis, after first being duly sworn under oath, deposes and states as follows:

1. I reside at 147 Algonquin Road, Barrington Hills, Illinois. I reside with my wife and son.

2. I am the President of Paaris & Associates. Paaris & Associates is involved with real estate development and financial consulting. I have been in the real estate financing business for approximately 20 years.

3. I served in the United States Army Reserves from approximately 1968 to 1974. I was honorably discharged. At the time of my discharge, my rank was sergeant.

4. I am an acquaintance and friend of Peter Palivos for approximately 11 years. I am familiar with the criminal charges brought against Peter Palivos. I have asked Peter Palivos on a number of occasions what happened. Peter Palivos has always told me that he was not involved with anything, and that he was framed. In my opinion, Peter Palivos is an honest and sincere man. During all of the years that I have known Peter Palivos, he has never lied to me or to anybody I know.

5. I am an acquaintance and friend of Nick Black for over 25 years. I am also a distant cousin of Nick Black's wife, Maria Black. I am familiar with the criminal charges brought against Nick Black. I have asked Nick Black on a number of occasions what happened. During my first conversation with Nick Black, which occurred in summer, 2002 at Nick Black's Mega Development Corporation's office near Lawrence Avenue & Milwaukee in Chicago, Nick Black told me that he did not blame Peter Palivos or George Palivos for anything. I specifically asked Nick Black who was to blame for his problems. Nick Black said that his partner, Dean Kalamatianos, was responsible for all of his problems. Nick Black did not provide any details.

6. During the 2002-2003 winter, I had a second conversation with Nick Black. That second conversation also took place at Nick Black's Mega Development Corporation office near Lawrence Avenue & Milwaukee in Chicago. The meeting started inside of Nick Black's office, and it continued on the rooftop of the building. We went to the rooftop because Nick Black is a smoker and he wanted to go to the rooftop to have a cigarette. During this second conversation, Nick Black admitted to me for a second time, that Peter Palivos was not to blame for anything, and that Peter Palivos was not involved with anything. I then asked Nick Black why a newspaper article reported that he was cooperating against Peter Palivos if Peter Palivos was not to blame for anything, and if Peter Palivos was not involved with anything. Nick Black responded that he had no choice because the government had put a lot of pressure on him to lie about Peter Palivos. Nick Black also said that he did what he had to do to protect himself so he had to lie about Peter Palivos. I

asked Nick Black if he felt guilty for what he was doing. Nick Black said that he felt guilty so he was talking to his attorney about going against the government because he was accusing the government of prosecutorial misconduct. I asked Nick Black what that meant. He said that the government had deceived him and his attorney. This was done to force him to lie about Peter Palivos.

7. I was told by Nick Black in approximately 1996 that he had tax problems with the government, and that he owed tax money to the government. During the two conversations that I had with Nick Black in 2002 and the winter of 2002-2003 I asked Nick Black if the tax problems he had in 1996 had any connection to the new criminal charges. Nick Black said "No comment".

8. I was told by Nick Black and Dean Kalamatianos in approximately 1996 that Nick Black was experiencing financial problems. The financial problems were connected to a restaurant deal that Nick Black and Maria Black were involved with in 1996.

9. Until the winter of 2002-2003 I was always closer to Nick Black than I was to Peter Palivos. This is because I have known Nick Black longer; Nick Black has provided free legal advise to me over the years; and I am a distant cousin of Nick Black's wife. However, my feelings and respect for Nick Black changed dramatically after Nick Black admitted to me that he was lying about Peter Palivos because the government had put pressure on him to lie about Peter Palivos.

10. On Sunday night, September 28, 2003 at approximately 8:30 p.m. I was returning home from visiting my parents. As I drove into my driveway, I noticed that an unknown automobile was waiting for me near my home's driveway. As I drove down my driveway, which is approximately 250 feet long, the unidentified automobile followed me. I parked my car in front of my home. The unknown vehicle parked across from my automobile. Two people got out of that vehicle. The driver of that vehicle was a male who was approximately 5'6", 210lbs, bold and wearing glasses. The passenger of the vehicle was a female who was approximately 5'9", 120 lbs. The woman was wearing a jacket. The woman opened her jacket. She pulled out some identification. At the same time, I saw that the woman had a holster and gun. The woman said, "We are both FBI agents". The woman showed me her FBI identification. The woman's identification confirmed that she was with the FBI. Her first name was 'Julie'. The man never showed me any identification. However, the woman agent referred to him as agent 'Thomas'.

11. The woman FBI agent began interviewing me. She asked me numerous questions about the two statements that I had previously given about Nick Black and Peter Palivos. I confirmed that the two statements that I gave contained truthful information. I also corroborated the accuracy of specific information contained in the two statements. At that point, the male FBI agent asked me if anyone pressured me to give the two statements. I responded that nobody pressured me to give the two statements. The interview with the two agents lasted approximately 15 minutes. Both agents were courteous throughout the interview. At the conclusion of the interview, FBI agent 'Thomas' asked me to keep the interview confidential. Thereafter, the two agents got into their car and they drove away.

12. While the two federal agents interviewed me, I was alone and it was dark outside. After the agents left, I respected Agent Thomas' request. I did not tell anyone details about being interviewed on the evening of September 28, 2003.

13. In November, 2003 I spoke to Peter Palivos. At that time, Peter Palivos asked me if any agents interviewed me during his trial. I told Peter Palivos about what happened on the evening of September 28, 2003. I did this because I wanted to be truthful with Peter Palivos.

14. In January, 2004 I spoke to Peter Palivos again. At that time, Peter Palivos asked me if I would give an affidavit to his attorney or investigator. I said I would.

Further the affiant saveth not.

Peter Kopsaftis

Subscribed and sworn before me this 5 th day of February, 2004.

"OFFICIAL SEAL"
John D. Rea
Notary Public, State of Illinois
My Commission Exp. 11/15/2007

Notary Public

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

AFFIDAVIT OF DEMETRIOS L. KOZONIS

Demetrios L. Kozonis, after being sworn under oath, deposes and states the following:

1. I reside at 1715 Sunset Lane, Bannockburn, Illinois. I live there with my wife and four children.

2. I am president of Delko Construction, Co., Inc., which has its headquarters at 4849 North Milwaukee Avenue, Chicago, Illinois. I have been president of Delko Construction Co., Inc. since 1981.

3. I have a bachelor's degree and masters degree in Engineering from the University of Illinois at Chicago. I also taught engineering at the University of Illinois at Chicago from 1974 thru 1977.

4. Nick Black applied for a job with Mega Realty, Inc. in February 2002 while Nick Black was still a licensed attorney. Mega Realty, Inc. is affiliated with Delko Construction Co., Inc.

5. In February 2002 I conducted a job interview with Nick Black. During that job interview I asked Nick Black about a newspaper article that I had read about Nick Black being indicted and about Black cooperating against Peter Palivos. At that time, Nick Black told me the matter involved a real estate case that Nick Black had handled where he made only $4,000. Also, that a loan was not paid off and a criminal investigation resulted. Nick Black also stated to me that Peter Palivos was not involved with anything but the

government had placed immense pressure on Nick Black to implicate Peter Palivos. He said he dealt only with Peter's brother, George Palivos. He did not say, however, whether Peter Palivos was guilty or not guilty.

6. I hired Nick Black as president of Mega Realty, Inc. even though I had some reservations because Nick Black was under indictment. I did this because Nick Black had been my friend and attorney for many years. Sometime later, the pending criminal indictment came up a second time in another conversation between me and Nick Black. At that time, for the second time, Nick Black said to me that Peter Palivos was not involved with anything and that the government had placed immense pressure on Nick Black to implicate Peter Palivos. He did not explain what "anything" meant nor did he say that what he told the government was false. During the second conversation Nick Black also told me he wanted to recant his testimony because the government had misled him and his attorney, Elliot Samuels. At that point Nick Black and I set up a meeting with Black's attorney, Elliot Samuels, in order to discuss the matter.

7. Nick Black, Elliot Samuels, and I met. Nick Black told Elliot Samuels he wanted to recant. Nick Black also told Elliot Samuels that he was angry at AUSA Wilson and the agents because they lied to Nick Black and Elliot Samuels about what some forensic test results showed.

8. Elliot Samuels told Nick Black and me that he would prepare a motion for Nick Black to recant. Thereafter, the meeting ended.

9. Sometime later, on February 13, 2003, Elliot Samuels sent Nick Black a letter which was consistent with some of the direction that Nick Black had given to Elliot

Samuels. Nick Black received the letter. Thereafter, Nick Black gave a copy of the letter to me. I kept a copy of that letter. (Attached as Ex. A)

10. Elliot Samuels refused to file a motion to recant because he felt that Nick Black would lose his "deal with the government." Thereafter, during the spring of 2003 I went with Nick Black to meet with attorney Robert Rascia for a second opinion.

11. Bob Rascia, Nick Black, and I met. Nick Black told Bob Rascia that Nick Black wanted to recant. Bob Rascia did some research and told Nick Black and me that if Nick Black recanted Nick Black would lose his "deal with the government.". Also, Bob Rascia told Nick Black and me that Nick Black could face additional charges for perjury because Nick Black had given testimony to the grand jury while he was under oath and Nick Black could not change that sworn testimony. Thereafter, Nick Black told me he was not going to recant because he did not want to risk going to jail.

12. I always told Nick Black to tell the truth. I have lost respect for Nick Black because Nick Black is not willing to recant even though Nick Black admitted to me on two different occasions that Peter Palivos was not involved with anything.

DEMETRIOS L. KOZONIS

SUBSCRIBED AND SWORN to
before me this 4th day of
February 2004

Lynn M. Arnold
NOTARY PUBLIC

"OFFICIAL SEAL"
LYNN M. ARNOLD
Notary Public, State of Illinois
My Commission Expires 8/20/07

666139_1

STATE OF ILLINOIS)
)
COUNTY OF COOK)

AFFIDAVIT

Barbara Gomez-Wood, after being duly sworn under oath, deposes and states as follows:

1) She resides in the Chicago area.

2) From 1999 through 2000, she worked as a legal secretary for the Law Office of Nicholas Black. While working for Nicholas Black, Mr. Black used legal pads in their entirety and all ink pens in their entirety as well. Nicholas Black never kept an old valise under his desk.

3) Nicholas Black did maintain his diary / calendar books for many years. Those books, which were black in color, were stored in a back room.

Further affiant sayeth not.

Barbara Gomez-Wood

Subscribed and sworn to before me this
11th day of September, 2007

Valerie Stelmachowski
Notary Public

OFFICIAL SEAL
VALERIE STELMACHOWSKI
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/03/11

FROM :JOE M. HOLLOMON & ASSOC FAX NO. :6013531308 Jan. 12 2004 01:28PM P4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JAN 12 2004
J. T. NOBLIN, CLERK
BY _____ DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

-against-

3:03CR120WS

PAUL S. MINOR, JOHN H. WHITFIELD, OLIVER E. DIAZ, JR., JENNIFER DIAZ, and WALTER W. "WES" TEEL,

Defendants.

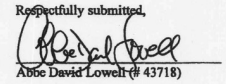
DEFENDANT PAUL S. MINOR'S MOTION TO DISMISS THIS INDICTMENT BASED ON DUE PROCESS VIOLATIONS IN THE INSTITUTION OF CHARGES, EQUAL PROTECTION VIOLATIONS IN SELECTIVE PROSECUTION AND THE UNREMEDIABLE CONFLICT OF INTEREST OF THE U.S. ATTORNEY

Defendant Paul S. Minor, through his undersigned counsel, moves to dismiss the Indictment pursuant to Federal Rule Criminal Procedure 12(b)(3). This motion is based on the attached Memorandum in Support hereof, the Exhibits attached to the Memorandum, the pleadings and papers on file in this action, and upon such other evidence and argument as may be presented at the hearing on this motion.

Mr. Minor respectfully requests that this Motion to Dismiss This Indictment Based On Due Process Violations In The Institution Of Charges, Equal Protection Violations In Selective Prosecution And The Unremediable Conflict Of Interest Of The U.S. Attorney be granted and the Indictment be dismissed in its entirety.

Dated: January 12, 2004.

Respectfully submitted,



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FROM :JOE M. HOLLOMON & ASSOC FAX NO. :6013531308 Jan. 12 2004 01:28PM P3

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JAN 12 2004
J. T. NOBLIN, CLERK
BY DEPUTY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

3:03CR120WS

PAUL S. MINOR, JOHN H. WHITFIELD, OLIVER E. DIAZ, JR., JENNIFER DIAZ and WALTER W. "WES" TEEL,

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PAUL S. MINOR'S MOTION TO DISMISS THIS INDICTMENT BASED ON DUE PROCESS VIOLATIONS IN THE INSTITUTION OF CHARGES, EQUAL PROTECTION VIOLATIONS IN SELECTIVE PROSECUTION AND THE UNREMEDIABLE CONFLICT OF INTEREST OF THE U.S. ATTORNEY

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. PAUL S. MINOR, JOHN H. WHITFIELD, OLIVER E. DIAZ, JR., JENNIFER DIAZ and WALTER W. "WES" TEEL, Defendants.	3:03CR120WS

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PAUL S. MINOR'S MOTION TO DISMISS THIS INDICTMENT BASED ON DUE PROCESS VIOLATIONS IN THE INSTITUTION OF CHARGES, EQUAL PROTECTION VIOLATIONS IN SELECTIVE PROSECUTION AND THE UNREMEDIABLE CONFLICT OF INTEREST OF THE U.S. ATTORNEY

Defendant Paul S. Minor submits the following Memorandum in Support of his Motion to Dismiss the Indictment:

INTRODUCTION

Perhaps the most fundamental requirement for every prosecution is that it must result from a decision-making process that is devoid of any improper motive. So essential is this requirement that courts look to insure that there is not even the appearance of impropriety in the decision by a prosecutor to pick one person and charge him with serious offenses. *See, e.g., United States ex rel., SEC v. Carter*, 907 F.2d 484 (5th Cir. 1990) (*sua sponte* reversing convictions where prosecutor not disinterested). This case fails these tests.

Even before the grand jury handed up this Indictment on July 25, 2003, Ex. 1 (U.S. v. Minor, et. al., Indictment), the public already questioned the appearance of impropriety

surrounding the investigation by the U.S. Attorney for the Southern District of Mississippi.

The *Biloxi Sun Herald* expressed the following concern:

> Is Mississippi's justice system fair, honest, and just? Are all person's treated equal under the law?
>
> Or is there a parallel universe, unseen by most of us, where a cadre of rich and powerful lawyers are able to tilt the scales of justice in their favor with cash and political influence?
>
> The answer at the moment, is not known, but the questions are on a great many minds, and the reputation of our court system, the judiciary, the bar, and the investigative and prosecutorial branches of justice all stand in the balance as a federal probe seeks to discover the truth.
>
> Yet the probe itself is ensnared by many of the same questions besetting the other institutional pillars. The interconnectivity between so many of the parties involved at the very least raises concerns about whether the appearance of justice can be obtained.

The newspaper went on to review many of the facts set out in this motion and then concluded that the investigation was "suspect on the surface." Ex. 2 (*Biloxi Sun Herald*, "Probe Ensnared In A Web Of Its Own" (June 15, 2003)).

One month later, on July 25, 2003, the concerns expressed in the *Sun Herald* were realized when U.S. Attorney Lampton announced an unprecedented indictment that incomprehensively picked and chose among attorneys and judges in Mississippi. Following the filing of charges, the questions about the motives behind this case have only increased. One Mississippi newspaper reported that, "[s]ome trial lawyers contend the timing of the investigation is politically motivated, possibly driven by a corporation-friendly Republican White House." Ex. 3 (*Biloxi Sun Herald*, "Top Tobacco Lawyers Subject Of Judicial Influence Probe" (Nov. 3, 2002); *see also* Ex. 4 (*Greenwood Commonwealth*, "Witch Hunt Or Real Deal?" (May 21, 2003)) ("Trial lawyers in the state have offered a Republican conspiracy theory of sorts that there is a strong political component to the Bush administration

Justice Department's probe of trial lawyer political donations to a Democratic governor and judges perceived as anti-tort in temperament.").

The media and public, which do not have the benefit of the facts available to this Court, have already raised their own warning signals. With the facts this Court has and could obtain, it is clear that the Indictment is tainted by an improper decision to charge, questionable selectivity, and at least the appearance of fatal conflicts of interest.

FACTS

I. PAUL MINOR HAS BEEN CHARGED WITH THE MOST SERIOUS OF FEDERAL FELONIES FOR WHAT IS AT MOST A STATE ELECTION LAW VIOLATION.

At the core of the 34-page indictment in this case is the basic premise that Paul Minor bribed judges. Mr. Minor vigorously denies the charges and has pleaded not guilty as it is well known that those judges Mr. Minor is alleged to have bribed were friends of his for some time and the so-called benefits for which he gave bribes were in cases where his past success and the merits of the litigation demonstrate that he did not need the help. What the allegations in the federal indictment allege, at most, is that Mr. Minor may not have reported campaign and other support correctly under Mississippi election and attorney discipline rules. *See, e.g.,* Miss. Code Ann., § 23-15-801 *et seq*. Yet, the U.S. Attorney's Office has not only decided to turn these acts into the proverbial "federal case," but has piled on a charge that Mr. Minor is a "racketeer," making his actions on par with the head of an organized crime family or a drug ring. His law firm, which has helped countless people for over 25 years, has been labeled a "racketeering enterprise" again as if it was one of the mob families in New York or the Cali cartel in Colombia.

To begin with, this type of overkill is subject to question. Why would the U.S. Attorney's Office bring such draconian charges for this type of conduct?

II. PAUL MINOR'S ACTIONS ARE CONSISTENT WITH PRACTICE AMONG ATTORNEYS IN MISSISSIPPI BUT HE HAS BEEN SINGLED OUT FOR FEDERAL PROSECUTION.

Unlike many other states in the country, Mississippi continues to have popular elections of state judges. Campaign laws allow attorneys who practice in front of the judges running for election to give campaign contributions and other support. Until just a few years ago, there were no limits on the amount of a contribution a person could make to a judicial candidate. In addition, many of the communities in Mississippi are small enough and close-knit enough so that judges and attorneys are friends, often belonging to the same clubs and religious institutions. In sum, the Mississippi system assumes that these interactions can occur and that judges can still render impartial decisions based on the merits of cases and not the friendships they have or the support they are given.

Under this system, dozens and dozens of attorneys give contributions, provide loan support, give campaign advice, and continue to socialize with judges before whom they practice. Public records reveal that a number of attorneys were involved in providing some of the judges named with this type of help. There are prominent members of the bar included in the list with last names like Frazer, Langston, Pittman, and Scruggs.

None of these attorneys has done anything even remotely meriting criminal charges, let alone a federal RICO charge. None has tried to use his relationship with judges or support for an improper purpose. All have operated within the Mississippi system which presumes, as it should, honesty and integrity in lawyers and judges. One or two have actually engaged in conduct very similar to Mr. Minor.

Yet only Mr. Minor has been charged. The question, again, is "Why?"

III. THE ROLE OF "TORT REFORM" AND NATIONAL POLITICS RAISES QUESTIONS ABOUT MR. MINOR BEING CHARGED.

A. Big Business And The Republican Party Decided To Make Mississippi A Principal Battleground To Defeat Plaintiffs' Attorneys Like Paul Minor.

For years, big business in America has singled out Mississippi for criticism concerning jury verdicts in cases brought against corporations by plaintiffs' attorneys like Paul Minor. Pro-business media have echoed and amplified this argument. For example, the *Wall Street Journal* described the state court system as "a forum-shopping Nirvana for trial lawyers from every part of the U.S. seeking million-dollar verdicts against asbestos, tobacco, HMOs, doctors, drug companies, anything that moves." Ex. 5 (*Wall Street Journal*, "Mississippi Spurning" (May 13, 2002)).

Regardless of whether this perception advanced by national business interests is correct or not, the record is clear that big business interests began contributing large amounts of funds in elections to support tort law reform. According to a *New York Times* article at the time citing James Wootton of the Chamber of Commerce, "to draw voters' attention to candidates who might overrule tort reform legislation favored by business," the Chamber began spending over $1 million for advertising in state Supreme Court races. Ex. 6 (*New York Times*, "U.S. Chamber Will Promote Business Views In Court Races" (Oct. 22, 2000)). According to Mr. Wootton, "Mississippi and other states were attempting to 'waylay' business interests and were posing 'a serious threat to the national economy.'" *Id.*

The political conflict over tort reform naturally migrated to elections for positions in the state judiciary. In the 2000 election cycle, the Chamber of Commerce spent several million dollars on issue ads advocating tort reform in Mississippi and other states having highly contested races for the judiciary and attorney general. Ex. 7 (*Washington Post*, "Businesses Ante Up $30 Million; Last-Minute Bid At High-Stakes Hill And Judicial Races"

(Oct. 26, 2000)). Similarly, the Mississippi Bankers Association, Mississippi Physicians' PAC, and Mississippi Medical PAC, contributed a tens of thousands to judicial candidates during the 2000 election. Ex. 8 (Secretary of State Records) As a result of this national attention, "the 2000 judicial elections were scandalous in the millions of dollars pumped into them by outside special interest groups." Ex. 9 (*Biloxi Sun Herald*, "The Judiciary: What Does It Take To Bring A Change?" (July 30, 2003)).

This battle between big business and the plaintiffs' bar took on national political dimensions when the Republican Party, including President Bush, made it a priority in their national economic proposals. Ex. 10 (Speech: George W. Bush, San Bernadino California (Oct. 16, 2003) (advocating tort reform)); Ex. 11 (President Bush's Six Point Plan for Economy posted at <<www.whitehouse.org>> (advocating tort law reform)); Ex. 12 (*Washington Post*, "Battle Over Court Awards Takes More Partisan Turn" (August 10, 2003) (setting forth Republican Party stance advocating tort reform)).

One of the fiercest battles in this war between big business and plaintiffs' counsel was in the 2000 re-election campaign of Justice Oliver Diaz, one of the defendants in this case. Among the four candidates for the Supreme Court supported by the Chamber of Commerce, one was Keith Starrett in his run against Justice Diaz. Ex. 13 (*National Law Journal*, "Mixed Results For C of C" (Nov. 20, 2000)). The Chamber's support "'marks an increased commitment' by businesses to play a part in the selecting of judges," said a representative of the Chamber of Commerce. *Id.* "The contest became controversial when the U.S. Chamber of Commerce stepped into the race, spending about $1 million on ads that promoted Circuit Judge Keith Starrett of McComb and attacked Diaz. Diaz won, raising more

than $800,000 in contributions to help with his campaign and runoff election." Ex. 14 (*Clarion Ledger*, "Judicial Probe Intensifying" (May 2, 2003).

This very race and the funds involved in the election are at the heart of the allegations in this case.

B. Paul Minor And Other Plaintiffs' Attorneys Were Vigorous Opponents Of Big Business' Attempts To Change The Mississippi Judiciary.

Against this effort by outside big business, many Mississippi trial attorneys, including Mr. Minor, became energized to fight back, and they became vocal opponents against the efforts of big business and the Republican Party to change the state's judiciary. To do so, Mississippi lawyers assisted in the election of judges who they believed had philosophies akin to their own, without any intent to improperly influence such judges in specific cases. Attorneys contributed significant amounts to state judicial candidates who shared their political philosophies, without expecting or receiving a case-specific *quid pro quo*. For example, attorney Crymes Pittman contributed $14,800 to judicial candidates during the 2000 election, Ex. 15 (Secretary of State records), and Shane Langston contributed $19,900 to judicial candidates during the same race. Ex. 16 (Secretary of State records). Crymes Pittman's wife and son also contributed $14,800 to judicial candidates in 2000. Ex. 17. (Secretary of State records). During the same election cycle, Attorney T. Roe Frazer and his wife contributed $15,000 to candidates for the Mississippi Supreme Court. Ex. 18 (Secretary of State records). And there are many other instances which could be listed.

Mr. Minor was a vocal supporter and long-time contributor to Justice Diaz. In addition, Mr. Minor and Justice Diaz "have been friends for years." Ex. 19 (*Clarion Ledger*, "Justice Investigation May End This Week" (July 23, 2003)); *see also* Ex. 14 (*Clarion Ledger*, "Judicial Probe Intensifying"). It was completely natural and logical for Mr. Minor

to help Justice Diaz in what now had become an election race with important state and national implications.

Those from the side of big business would say that their support for specific judges was for the purpose of changing the overall judicial philosophy of the state and not so that a specific judge would be beholden to them in any case. Those individual attorneys who supported different judges did so for the same reason. This is the tug-of-war when there are popular elections of judges in which attorneys and those with case interests can participate. In the midst of this keen political debate about Mississippi judges and the future of how elections would be influenced by outside business interests, the U.S. Attorney decided to seek an indictment converting Mr. Minor's actions not as his desire to take part in the political process but as his attempt to corrupt judges for his own personal benefit.

Again, others were not treated in this fashion, and the question remains "Why?"

IV. PARTISAN POLITICS ENTERED OR APPEARS TO HAVE ENTERED INTO THE DECISIONS THAT FORMED THE BASIS OF CHARGES AGAINST PAUL MINOR.

A. Mr. Minor's Political Positions Repeatedly Conflicted With Those Of The Republican Party In Which U.S. Attorney Lampton Has Run For Office And Sought Support.

Paul Minor is a Democrat. He is not just a registered Democrat, but he is an active Democrat, participating in campaigns and speaking out on behalf of candidates with whose positions he agrees. He gives political contributions to these candidates and lends his name to them as well. For example, Mr. Minor and his law firm contributed $100,000 to the Democratic Party in 2001-02. Ex. 20 (FEC Records). Moreover, in contrast to the Republican Party platform advocating enactment of tort reform, Mr. Minor has been an outspoken critic of tort reform. *Compare* Ex. 10, 11, 12, *supra, with* Ex. 21 (*Biloxi Sun Herald,* "Lawyer Claims Public Misled" (May 19, 2002) ("Minor estimates he spends 25

percent of his professional time keeping informed about issues surrounding the tort reform debate.")). In this same vein, Mr. Minor has been an active member and supporter of the American Trial Lawyers Association, an organization that advocates on behalf of plaintiffs' counsel and their clients, and he himself has testified before the Mississippi State Legislature and been widely quoted in the press opposing this initiative. Ex. 22 (*Clarion Ledger*, "Tort Reform" (Aug. 14, 2002)).[1]

U.S. Attorney Dunn Lampton is a Republican. One can presume he was recommended for this position by the Republican U.S. Senators to be nominated by a Republican President because he agreed with basic Republican policies as they would affect his role as chief federal law enforcement officer in his district. There is absolutely nothing wrong with this process that allows each party that wins a national election to have individuals hold office who share the party's views. The only issue arises if partisan differences influence prosecutorial decisions or appear to do so. That is what exists in this case.

Mr. Lampton is not simply a registered Republican; he is an active partisan who has even run for federal office on two occasions. In these elections, Mr. Minor and other Democrat attorneys have supported Mr. Lampton's opponents. There is nothing wrong with a U.S. Attorney being appointed who previously has run for political office. The only issue arises if that U.S. Attorney then directs or participates in an investigation in which his

[1] In fact, when the FBI executed a search on Mr. Minor's law office, agents seized the records of Mr. Minor's files describing his advocacy against tort reform and other work on behalf of the American Trial Lawyers Association. There could be no legitimate reason for the government's taking this type of first amendment-related material.

opponents or those who supported his opponents are the subject. That is what exists in this case.

It turns out that as a candidate for federal office, Mr. Lampton through his political committee, violated various federal campaign laws by the improper receipt of contributions and for misstating the financial activity of the committee. The Federal Election Commission cited his committee for these violations and also fined it for others. Ex. 23 (FEC records of administrative fines and audit report). There is nothing wrong with a U.S. Attorney having run for federal office and, like so many others, having a campaign committee which violated contribution and other election laws. The only issue is if that same U.S. Attorney directed an investigation and decided to bring serious felony charges against others while he was able to address his or his committee's violations as administrative and civil fines. This exists in this case as well.

The conflict between U.S. Attorney Lampton and Mr. Minor runs deeper than differing political affiliations and positions on tort reform.[2] It also involves the 2000 race for Supreme Court Justice between Oliver Diaz and Keith Starrett referred to above. Mr. Starrett is a personal friend of U.S. Attorney Lampton and for many years worked as an Assistant District Attorney under U.S. Attorney Lampton when he (Lampton) was the District Attorney of Pike County. Ex. 27 (*Biloxi Sun Herald,* "Web Of Connections" (June 8, 2003)). In

[2] Not only is there this political difference between the U.S. Attorney and Mr. Minor, Mr. Minor has also represented individuals and has obtained two separate multi-million dollar results in suits against a company owned by the U.S. Attorney's relatives. In 1989 and again in 2002, Mr. Minor represented people who sued and collected money damages from Ergon, Inc. and its subsidiary, Magnolia Marine Transport Company. Ex. 24 (*Daniel v. Ergon, Inc.,* 892 F.2d 403 (5th Cir. 1990); Ex. 25 *England v. Ergon Inc., et al.,* Cause No. 37,742 (Hinds Co. Circuit Court). It each case, on behalf of his clients, Mr. Minor alleged negligence or other wrongdoing against the Lampton family's entities. Ex. 26 (Secretary of State records). These suits no doubt caused the relatives embarrassment and money, one of which included the assessment of punitive damages.

contrast, Minor was a vocal supporter and friend of Justice Diaz. In fact, his friendship and support began as early as when Mr. Diaz was a member of the State House of Representatives. Ex. 28 (Secretary of State records). There is nothing wrong with the U.S. Attorney directing or participating in an investigation in which there are allegations that improper influence has been asserted in judicial elections. The only issue is if that U.S. Attorney began and supervised this investigation notwithstanding the fact that it involved a race for a judicial position in which he was closely identified with the candidate who lost to one of the defendants (Justice Diaz) in large part through the support of another of the defendants (Mr. Minor). This too exists in the case.

In a system that seeks to protect against even the appearance of a conflict of interest, the political aspects of this investigation and its resulting charges create blinding questions of improper involvement by the U.S. Attorney.

B. Prominent Democrat Paul Minor Is Charged With Racketeering While Prominent Republican Supporters Are Given Far Different Consideration.

Mr. Minor again asserts that he has not violated federal laws in his interaction with the judges named in the indictment. He also asserts that other attorneys who have had the same types of contacts also have not violated any federal law. However, the benefit of the doubt that others have received has not been given to him. Pointing out the differences does not indicate that the others have committed any offense; it points out the troubling manner in which Mr. Minor has been treated.

The charges filed against Mr. Minor must be compared with the manner in which U.S. Attorney Dunn Lampton has addressed conduct by those of his own party and the friends of those in that party. The public record establishes multiple personal, political, and professional connections that exist between and among U.S. Attorney Lampton, Senator Trent

Lott, and the prominent Republican supporting trial lawyer Richard "Dickie" Scruggs. These connections made it absolutely clear that the U.S. Attorney and his office[3] had no business directing and participating in a federal investigation of corruption in Mississippi, but that is exactly what he did, and the resulting charges against only those of a different party are troubling.

U.S. Attorney Lampton was appointed by President George W. Bush, reportedly upon the recommendation of Senator Lott. Ex. 27 (*Biloxi Sun Herald*, "Web of Connections"). Senator Lott and U.S. Attorney Lampton became acquainted during the latter's twice failed Republican campaigns for a seat in the U.S. House of Representatives. *Id.* During the pendency of the investigation, Senator Lott was the Republican leader in the U.S. Senate, the body that had to confirm Mr. Lampton. In terms of professional ties, Stan Harris, who is the ethics adviser and Chief of Staff to U.S. Attorney Lampton was a former staff member of Senator Lott, *id*. and was brought on only after the Senator recommended Mr. Lampton.

Mr. Scruggs and/or his law firm were, according to one report, the state's largest contributors of political "soft money" to the Republican Party; his law firm donated $250,000 to the Republican Party in 2000. Ex. 29 (The Center for Responsive Politics, Mississippi 1999-2000, Top Soft Money Donors (<<www.opensecrets.org>>)); *see also* Ex. 4 (*Greenwood Commonwealth*, "Witch Hunt or Real Deal?). Additionally, records of the U.S.

[3] The U.S. Attorney cannot run from his role in this case by pointing to the involvement of others from his office or from the Criminal Division of the Department of Justice in Washington, D.C. His office began and supervised the investigation, and that could not have occurred without his approval and direction. He has stayed actively involved, including pre-indictment meetings with defense counsel and appearances when the charges were filed and in subsequent court proceedings. He signed the indictment in the case and actually announced it to the media. Case pleadings, filed even as recently as the past few week, continue to bear his name.

Federal Elections Commission establish that Mr. Scruggs' wife contributed $250,000 to the Republican National Committee in August 2000. Ex. 30 (FEC Report, Republican National State Election Committee (Sept. 15, 2000)). In addition to shared politics, Senator Lott and Mr. Scruggs have maintained close personal ties. They are married to sisters and are neighbors, having residences on the same waterfront street in Pascagoula, Mississippi. Ex. 27 (*Biloxi Sun Herald,* "Web of Connections").

1. Mr. Scruggs' Proper Campaign And Other Support For State Office Holders Is Correctly Viewed As Appropriate While Mr. Minor's Is Treated As Federal Crimes.

Mr. Minor is charged with having a corrupt and improper purpose for guaranteeing loans to sitting state judges. Ex. 1 (Indictment at 4, ¶ 11). Among the allegations in the indictment is that he provided for principal/interest payments on the loans he guaranteed. *Id.,* at 13, ¶ 14. Also charged is that he used an intermediary to pay off one of the guarantees. *Id.,* at 15, ¶ 32. Yet another allegation is that he provided the use of an apartment to Justice Diaz, *Id.,* at 20, ¶ 16, as it turns out so that the latter could visit his children while separated from his wife. For these and the others allegations, Mr. Minor has been charged with 13 federal felonies.

Federal and state campaign records, as well as media reports, and the documents that U.S. Attorney Lampton has now made available from his own investigation indicate that Mr. Scruggs engaged in very similar conduct. Yet U.S. Attorney Lampton's and Mr. Scrugg's actions and reactions to this conduct are starkly different from Mr. Minor's predicament.

While Mr. Minor was notified that he was a target of a grand jury and would be indicted, Mr. Scruggs stated publicly that he "does not have an immunity agreement with the prosecutors and that he doesn't need one," Ex. 27 (*Biloxi Sun Herald,* "Web of

Connections"), and said that "I don't have an attorney. I don't need an attorney." Ex. 3 (*Biloxi Sun Herald,* "Top Tobacco Lawyers").

Although paragraph 20 of the Indictment charges Mr. Minor with the "racketeering act" of guaranteeing a loan to Oliver and Jennifer Diaz in the amount of $75,000, Ex. 1 (Indictment at 26, ¶ 20), it turns out that Mr. Scruggs guaranteed and paid off a loan for $80,000 on behalf of Justice Diaz in 2000. Mr. Scruggs has admitted to financing the payoff of the loan to Justice Diaz. Ex. 31 (*Corporate Legal Times,* "High Jury Awards In Mississippi Spark FBI Investigation" (Sept. 2003)). In addition, the U.S. Attorney has provided documents that indicate that Mr. Scruggs arranged for the payoff of this loan by using an intermediary, just as Mr. Minor is accused of doing.

While Mr. Minor is subject to a draconian indictment under RICO and other similarly serious federal statutes, the indictment written by or with the assistance of U.S. Attorney Lampton and his office carefully avoids the use of Mr. Scruggs' name, even where Messrs. Scruggs and Minor participated in the same financial transaction with candidates for the bench. For example, paragraph 16 of the indictment alleges that "OLIVER E. DIAZ, JR. lived rent free in a condominium in Biloxi, Mississippi, which was owned, <u>in part</u>, by PAUL S. MINOR." Ex. 1 (Indictment at 20, ¶ 16) (emphasis added). What the indictment fails to allege is who owned the other "part" of the condominium. In fact, the Warranty Deed for the condominium in question demarcates as owner "M&S ENTERPRISES, a Mississippi Partnership c/o Richard Scruggs." Ex. 32 (County of Harrison, Second Judicial District, Book 269, Page 116).

Similarly, paragraph 17 of the indictment alleges that "[o]n or about February 23, 2000, an individual ("Intermediary #2") sent a check in the amount of $27,500.00 to

WALTER W. "WES" TEEL to pay off the $25,000.00 loan, thereby causing the People's Bank to no longer show an outstanding loan balance." Ex. 1 (Indictment at 25-6, ¶ 17). Paragraph 18 of the indictment further alleges that "[o]n or about February 23, 2000, WALTER W. "WES" TEEL signed a promissory note promising to repay Intermediary #2 within thirty days." Ex. 1 (Indictment at 26, ¶ 18). It was subsequently reported that Mr. Scruggs is, in fact, Intermediary #2. Ex. 33 (*Biloxi Sun Herald*, "Scruggs' Ad Criticizes Sun Herald" (July 31, 2003)). After Mr. Scruggs was identified as Intermediary #2, it was reported that "Mr. Scruggs told the grand jury that he loaned Judge Walter Teel $27,000 and was repaid by Mr. Minor." Ex. 34 (*Biloxi Sun Herald*, "Mississippi Mud: All That Money Is Corrupting The Judiciary" (Aug. 19, 2003)); *see also* Ex. 35 (*Biloxi Sun Herald*, "Scruggs Unamed Figure In Indictments" (sic) (July 29, 2003)).

No one should ascribe improper motives to Mr. Scruggs' assistance to sitting judges or others in the state with whom he agreed or whom he supported.[4] No one should ascribe improper motives to Mr. Minor for his support either. Yet, the treatment and consideration each received is different, even when there are additional facts that make the distinctions dubious.

Mr. Minor had *no* case pending before the Mississippi Supreme Court in which Justice Diaz sat during the time that he was helping the Diazes. Mr. Scruggs, on the other hand, had at least two cases pending before the Supreme Court during the pendency of the

[4] In fact, Mr. Scruggs, as did Mr. Minor and others, provided perfectly proper campaign and other support, including loan guarantees to other state office holders, including a loan for $510,000 in support of Lieutenant Governor Amy Tuck's 1999 Campaign. The *Greenwood Commonwealth* has directly quoted Scruggs stating "[s]he [Ms. Tuck] called and asked me if I would guarantee a loan for her through BancorpSouth. I did, and there were a couple of loans totaling $500,000." Ex. 36 (*Greenwood Commonwealth*, "Scruggs Backed Loans to Tuck" (June 25, 2003)).

Jennifer Diaz loan where Mr. Scruggs' law firm was actually named a party. In *Johnson v. Scruggs, Millette, Bozeman & Dent, PA et al.*, No. 2000-CA-01231, Justice Diaz signed an order in December 2000 granting Scruggs' motion to remand the case to the trial court. Ex. 37 (Slip Opinion, Dec. 4, 2000). In *Scruggs, Millette, Lawson, Bozeman & Dent, P.A. v. Merkel & Cocke, P.A.*, No. 1999-CA-00406, Justice Diaz concurred in a 7-0 decision in favor of Scruggs, reversing the trial court's findings. Ex. 38 (Slip Opinion, Aug. 4, 2000).

Mr. Scruggs has proven time and again that he is a hard-working attorney, an honest member of the bar, and someone who has earned his success. When the Republican U.S. Attorney looks at Republican supporter Mr. Scruggs' actions he sees them in a way that avoids any criminal overtone. When the same U.S. Attorney looks at Democrat Paul Minor's actions, he sees racketeering. This is just not right.

2. The U.S. Attorney's Apparent Coordination With Or Providing Investigative Information To The Republican U.S. Senator Also Demonstrates Improper Partisan Involvement.

Given the sensitivity of any investigation into public office holders, the U.S. Attorney's active involvement in the Republican Party, and other relationships that exist with high-ranking Republican officials, one might expect that Mr. Lampton would keep an extra amount of distance from Mississippi public officials. This would seem even more logical as the conduct under review by the U.S. Attorney included conduct by other prominent Republicans. In yet another example of acts that should give this Court and the public great concern, there seems to have been coordination or the exchange of information between the U.S. Attorney and Senator Lott.

As already noted, Mr. Lampton was a political ally of Senator Lott, and Senator Lott has political and person relationships with Mr. Scruggs. Statements by Senator Lott about the investigation underscore the use of unusual investigatory procedures utilized by the

U.S. Attorney. As early as October 2002, Senator Lott made statements that suggested that federal and state authorities had provided him with information about the investigation, including the identity of the investigation's focus. Perhaps realizing the problem with this contact or speaking of it to the press, the Senator later denied such a communication occurred in May of 2003.

In October 2002 after it was reported that Mr. Scruggs had been questioned by federal authorities, Senator Lott told the press that he had spoken to both state and federal investigators and that "his family had nothing to worry about regarding an investigation of connections between Mississippi judges and lawyers." Ex. 39 (*Biloxi Sun Herald*, "Lott Asked Investigators About Scruggs" (May 31, 2003)). The Washington, D.C. political newspaper *Roll Call* reported that the Senator had "spoken to investigators and been assured the focus is on 'a particular judge' and 'a particular lawyer' -- neither of whom have anything to do with [Mr.] Scruggs." *Id.* The *Biloxi Sun Herald* reported that *Roll Call* directly quoted Senator Lott saying, "I've been assured that's the case by state and federal officials." *Id.* However, on May 29, 2003, Senator Lott contradicted his earlier statement when he told the *Biloxi Sun Herald*, "I have no connection in this case," and "I haven't talked to anybody with the Justice Department. I would not do that, and I don't appreciate the inference." Ex. 40 (*Biloxi Sun Herald*, "Lott, Moore Deny Influencing Probe" (May 30, 2003)).

The Senator's first media statement is troubling in two ways. First, the federal authorities had breached the confidentiality of the investigation by disclosing any information, let alone the identity of, the targets of the probe. More troubling is the fact that, as early as October 2002, the authorities already had focused on "a particular attorney" who appears to have been Mr. Minor (and certainly not Mr. Scruggs). Clearly, this communication nine

months before charges were filed indicated that Mr. Minor was already a target while the Senator's brother-in-law was given different consideration. The second media statement is troubling insofar as a U.S. Senator seems to have tried to take back his earlier statements about the inner-workings of a grand jury investigation, the proceedings of which he should not have been privy.

The circumstances surrounding what the U.S. Attorney or others were communicating and what influence Republican officials had with respect to who was, or who was not, the "focus" of the investigation bear careful Court scrutiny.

C. The Mississippi Republican Party Has Used The Filing Of Charges Against Paul Minor In Its Campaigns Against Democratic Candidates, Further Calling Into Question The Motives Behind The Case.

Just two months ago, in the midst of the gubernatorial campaign in Mississippi, the Republican Party and supporters of Governor-elect Haley Barbour (himself a former chair of the Republican Party) used the filing of charges against Mr. Minor in its efforts to taint Democratic Governor Ronnie Musgrove. Mailings to voters and advertisements on television mentioned how the Democratic Governor was close to and had accepted contributions from Paul Minor who was described as a "trial lawyer under indictment for bribery." Ex. 41 (TV Script, Haley Barbour for Governor Commercial). The campaign mailer, re-printing articles about the charges filed against Mr. Minor, claimed that electing Governor Musgrove would be a "Sweetheart Deal For Trial Lawyers" Ex. 42 (Campaign Mailer, Haley Barbour for Governor).

Some news reports described the use of Mr. Minor's indictment in the campaign. For example, one story said the indictment "has provided political fodder for the governor's race, with state Republican leaders calling for [Governor] Musgrove to return all of his contributions from Minor, one of Musgrove's top contributors. 'To avoid the appearance of

impropriety, he should refund the money,' said Jim Herring, state Republican Party Chairman, during a news conference Tuesday." Ex. 43 (*Biloxi Sun Herald*, "GOP Questions Minor's Links To Governor" (July 30, 2003)). (Ironically, Mr. Herring has not returned the political contribution Mr. Minor made to him when he ran for office.)

The statements of tort reform lobbyists, gloating about the charges filed and declaring that the case proved that decisions for plaintiffs had not been legitimate, provide additional evidence of improper purpose or the perception of an improper purpose behind the indictment. "'In Mississippi, the courts were setting national policy,' said Mike Hora, spokesman for the American Tort Reform Association. 'Those cases were not being reversed on appeal to the Supreme Court of Mississippi. That, I think, brought national focus to what was happening in Mississippi . . . . Many of the counties were really over the line in being unabashedly pro plaintiff.'" Ex. 44 (*Biloxi Sun Herald,* "Indictments Cast Doubt on Justice System Fairness: Business Leaders Hail News Of Indictments" (July 26, 2003)). The *Sun Herald* further reported that "[b]usiness leaders, who allege that trial lawyers have controlled the state's judiciary for too long, hailed the news of Friday's indictments." *Id.* However, the comment markedly displaying the political animus of the indictment came from Dick Wilcox, president of the Business and Industry Political Education Committee, "[t]his really makes trial lawyer money radioactive for candidates now . . . ." *Id.*

Were it not suspicious enough for people in different parties to be given different considerations in this case, how convenient was it that, after this case was investigated for a year or more, charges could be brought in time for the Republican Party to use them as part of its efforts against Democratic Governor Musgrove?

V. THE UNUSUAL PROCEDURES USED BY FEDERAL INVESTIGATORS ALSO EVIDENCE FATAL FLAWS WITH THE FILING OF CHARGES IN THIS CASE.

A. FBI Special Agent Campbell's Removal From The Case Raises Additional Questions Concerning The Filing Of Charges.

Matthew Campbell, a Special Agent with the Federal Bureau of Investigation ("F.B.I."), was a key investigator into possible corruption in the Mississippi judicial system. He had this role until, according to press accounts, he reportedly started asking questions about other prominent attorneys and public officials, including connections between Mr. Scruggs, Senator Lott, and state Attorney General Mike Moore. Ex. 45 (*Associated Press*, "FBI Agent Reassigned After Questioning Ties In Judge-Attorney Probe" (May 29, 2003)). As lead or a principal agent, Special Agent Campbell would have been able to trace whatever financial connections existed among any subject of the inquiry because he: (a) was a former chief financial officer of credit union before joining the F.B.I. in the late 1990's; (b) was one of the first investigators assigned to the matter; (c) had already traced financial connections among several involved individuals; and (d) was the principal agent in a prior investigation of corruption at NASA's Stennis Space Center, yielding more than a dozen convictions. Ex. 46 (*Biloxi Sun Herald*, "FBI Agent Taken Off Judicial Probe" (May 29, 2003)).

Apparently, once this investigation had been started, Special Agent Campbell wanted to follow leads that might involve others than Paul Minor. According to reports, the agent wanted to look further into the activities of other attorneys, including Mr. Scruggs and the agent even questioned U.S. Attorney Lampton as to whether Attorney General Moore should be involved in the "federal-state judicial probe, because of his relationship with

Scruggs . . . ." *Id.*[5] The next thing reported about Special Agent Campbell after these inquiries were suggested is that he was "reassigned" to a counter-terrorism unit. Ex. 2 (*Biloxi Sun Herald*, "Probe Ensnared In A Web Of Its Own"). The cause and effect for this transfer, under the circumstances, is highly suspicious.

B. FBI Special Agent Kevin Rust's Assignment To The Case Only Cements The Appearance Of Partisan Decisionmaking.

When Special Agent Campbell was reassigned and was no longer involved, the U.S. Attorney needed another investigator. The criteria for this selection now seem odd. The new agent was Special Agent Kevin Rust from Pike County. Unlike Agent Campbell, Agent Rust did not possess the background to lead the investigation: he had no institutional knowledge of the investigation, the location of his duty station was remote from Jackson and the Gulf Coast, and his apparent expertise was in the area of civil rights violations rather than banking. Ex. 47 (*Clarion Ledger*, "Justice Department Attorney Observes Grand Jury Testimony" (Feb. 9, 2000)). What Agent Rust did have was partisan political involvement in a matter directly involved in this inquiry — he had actually participated in a judicial election which forms the basis for some of the charges.

[5] The cited article and much of the public information on the investigation in the media cite as support "sources close to the investigation." These leaks, although important to informing the public as to the unlawful nature of this investigation, establish the disregard for law with which this investigation was conducted. *See* Fed. R. Crim. P. 6(e) (making it a crime for a governmental agent to disclose matters occurring before the grand jury). The timing of grand jury hearings, the identity of witnesses and the substance of their testimony have also been leaked to the media. *See, e.g.*, Ex. 27 *supra* at 1 (A federal grand jury . . . "is expected to reconvene in late July."); Ex. 34 *supra* ("Scruggs told the grand jury that he loaned Judge Walter Teel $27,500 . . . ."); Ex. 40 *supra* (disclosing identities of persons under investigation and the fact that the grand jury had subpoenaed banking records from The People's Bank in Biloxi and Merchants & Marine Bank in Pascagoula). These leaks of grand jury material are alone enough to cause the Court's inquiry into improper procedures in the case.

Records of the Mississippi Secretary of State show that on July 13, 2000, Agent Rust contributed $100 to the Friends of Keith Starrett. Ex. 48 (Secretary of State Record). Moreover, on July 18, 2000, Agent Rust contributed another $370 to Mr. Starrett's campaign. Ex. 49 (Secretary of State Record). Although it is unknown why Agent Rust structured his contribution into two separate transactions within one week, it is public record that Mr. Starrett was running against Oliver E. Diaz, Jr. for a seat on the Mississippi Supreme Court. It was certainly well-known in the legal community and should have been easily discovered by any competent investigator that Mr. Minor had been friends for some time with Justice Diaz. It was big business', specifically the U.S. Chamber of Commerce's, involvement in support of the candidacy of Starrett, that became the focus for Mr. Minor's 2000 support for Justice Diaz. Nevertheless, U.S. Attorney Lampton appointed or approved the assignment of an agent to investigate Justice Diaz, who was the person this agent's candidate had run against. The inquiry also was against Mr. Minor, one of the principal supporters of Agent Rust's candidate's opponent. Were that not enough to create the appearance of a lack of independence, it is also clear from the public record that for many years Mr. Starrett served as an Assistant District Attorney under then Mr. Lampton when he was the District Attorney in Pike County. How could it not be clear that any action against Mr. Minor would look like some payback for his opposition to the U.S. Attorney's former colleague and the F.B.I. Agent's candidate?

C. U.S. Attorney Lampton's Coordination With The Mississippi State Attorney General's Office In The Case Creates Additional Questions of His Proper Involvement In And Handling Of The Case.

It appears that the investigation underlying this indictment was initially conducted by the offices of the U.S. Attorney and the state Attorney General. Ex. 50 (*Associated Press*, "Moore Says That He Has Nothing To Do With Federal Judge-Attorney Probe") (May 30,

2003)). Attorney General Moore made statements reflecting his role. Ex. 27 at 2 (*Biloxi Sun Herald,* "Web of Connections") ("Moore first referred to his role in the judicial probe as a prominent one, with his office serving as co-investigator with the U.S. Attorney."). Then, when it became clear that the Attorney General had personal relationships which might create at least the appearance of a conflict or improper influence[6], the Attorney General did the right thing by recusing himself and presumably his office. Ex. 53 (*Greenwood Commonwealth*, "AG Distances Himself From Conflict In Judicial Probe" (May 29, 2003)) (Attorney General Moore stated that he distanced himself from any aspect of the investigation "to avoid even the appearance of some special influence"). At the least, this is what the U.S. Attorney should have done from the very start.

For some reason, the U.S. Attorney seems to have ignored Attorney General Moore's decision to remove himself from the investigation. When he announced the filing of charges, the U.S. Attorney made sure he included the Attorney General. Ex. 52 (U.S. Attorney, Southern District of Mississippi, Press Release (July 25, 2003)) ("Dunn Lampton acknowledged the contributions made in the initial stages of the investigation by officials of the Mississippi Attorney General's Office . . . .").

But matters creating unusual appearances as to what the U.S. Attorney was continuing to tell the Attorney General or his office came to a boil when it was reported that

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[6] Mississippi Attorney General Mike Moore and Scruggs "have been friends since law school at the University of Mississippi, and Moore chose Scruggs to lead the state's precedent-setting lawsuit against the tobacco industry in the 1990's." Ex. 50. *See also* Ex. 27 (*Biloxi Sun Herald,* "Web Of Connections") ("Moore and Scruggs grew up in Pascagoula and attended law school together at Ole Miss."). The relationship between Messrs. Moore and Scruggs also involved substantial campaign contributions. Records of the Mississippi Secretary of State establish that Scruggs' law firm or those with whom it worked contributed more than $100,000 to Moore's election campaign in 1999. Ex. 51 (Secretary of State records).

Mr. Moore was actually involved when Mr. Scruggs was called to the federal grand jury. A reporter from the *Biloxi Sun Herald* witnessed the Attorney General giving Mr. Scruggs a ride in his automobile to this federal courthouse for his testimony before the grand jury. Ex. 27. (*Biloxi Sun Herald,* "Web of Connections"). In response to public questions about this, the Attorney General stated, "I can't imagine what the impropriety would be," explaining that he was merely giving Mr. Scruggs, who had just arrived at the airport from out of state, a ride on his way to work at the state Justice Department. Ex. 50 (*Associated Press,* "Moore Says That He Has Nothing To Do With Federal Judge-Attorney Probe"). Moore added, "[w]hen I go to Pascagoula and fly in many times [Scruggs] comes and picks me up at the airport and takes me to my mama's house." *Id.* Needless to say, the U.S. Attorney's release, the Attorney General's statements, their actions, and explanations created more questions than they answered. Ex. 54 (*Greenwood Commonwealth*, Letter to the Editor, "Something Smells About Mike Moore's Explanation" (June 3, 2003)).

Whatever its purpose or intended effect, having the U.S. Attorney involve the Attorney General and then the Attorney General accompanying one person to the grand jury certainly could be interpreted as a statement of support for this person and a tacit request that this person be viewed or treated favorably. Needless to say, not everyone who went to the grand jury arrived in this fashion. So, whether this was a joint investigation to start and then became separate, what information the U.S. Attorney shared with the Attorney General's Office, and why the Attorney General was accompanying Mr. Scruggs to the grand jury are among the questions that must be answered.

ARGUMENT

WITH OR WITHOUT AN EVIDENTIARY HEARING, THE INDICTMENT SHOULD BE DISMISSED ON THE GROUNDS OF IMPERMISSIBLE FILING OF CHARGES, SELECTIVITY, AND CONFLICT OF INTEREST.

I. THE INDICTMENT SHOULD BE DISMISSED BECAUSE U.S. ATTORNEY LAMPTON'S ACTUAL AND APPARENT CONFLICTS OF INTEREST IRRETRIEVABLY VIOLATED MR. MINOR'S FIFTH AMENDMENT DUE PROCESS RIGHT TO A FUNDAMENTALLY FAIR CRIMINAL PROCESS.

A. A Disinterested Prosecutor Is An Essential Element To Insure A Person's Rights Are Protected, And The U.S. Attorney Here Was Far From Disinterested.

In 1940, then Attorney General (and later Supreme Court Justice) Robert H. Jackson addressed the United States Attorneys and stated:

> The prosecutor has more control over life, liberty, and reputation that any other person in America. His discretion is tremendous. He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations.
>
> Law enforcement is not automatic. It isn't blind. One of the greatest difficulties of the position of prosecutor is that he must pick his cases, because no prosecutor can even investigate all of the cases in which he receives complaints. If the prosecutor is obliged to choose his cases, it follows that he can choose his defendant. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted. With the law books filled with a great assortment of crimes, a prosecutor stands a fair chance of finding at least a technical violation of some act on the part of almost anyone. In such a case, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him. It is in this realm—in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself.

Ex. 42 (*The Federal Prosecutor*, An Address By Robert H. Jackson, Attorney General of the United States (April 1, 1940)) (emphasis added); *see also Morrison v. Olson*, 487 U.S. 654, 727-28 (1988) (Scalia, J., dissenting) (quoting same).

Similarly, the Fifth Circuit has recognized similar principles with respect to the important and delicate role held by the prosecutor:

> The prosecutor occupies a distinctive position in the criminal justice system: he is the hammer that sparks fire on the anvil of justice. He can strike a devastating blow to the career of a recidivist; he can release the shackles on an innocent victim of the system. But with great power comes great responsibility -- responsibility that easily can be abused. Justice is served only when convictions are sought and secured in a manner consistent with the rules that have been crafted with great care over the centuries. The Government's representative may prosecute with earnestness and vigor -- indeed he should do so. But while he may strike hard blows, he is not at liberty to strike foul ones. Because the prosecutor wields such great power, the opportunities for him to strike foul blows are many.

United States v. Diaz-Carreon, 915 F.2d 951, 956 (5th Cir. 1990) (quotations omitted).

Mr. Minor, as does any accused, has the constitutional due process right to criminal process that is fundamentally fair. *See Bank of Nova Scotia v. United States*, 487 U.S. 250, 257 (1988). Preservation of the "structural protections of the grand jury" is foremost among such fundamental rights. *Id.* Among the grand jury's structural protections is the "requirement of a disinterested prosecutor." *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 807 (1987); *see also United States v. Wallach*, 870 F.2d 902, 906 (2d Cir. 1989).

It is fundamental that a prosecutor who is not disinterested eviscerates the grand jury's structural protections because his interest calls into question the very decision to prosecute. Perhaps more than at any other stage of the criminal process, prosecutors are and

must remain the gatekeepers of fundamental fairness before the grand jury. As the Supreme Court has explained, the "modern" grand jury system has come to depend on "the assistance of the prosecutor's office and the investigative resources it commands." *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 430 (1983).

Accordingly, the prosecutor appearing before the grand jury must serve the interests of justice, rather than his or her own interests. In *Berger v. United States*, 295 U.S. 78 (1935), the Court explained:

> The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.

Id. at 88; *see also Diaz-Carreon*, 915 F.2d at 956 n.6; *United States v. Goff*, 847 F.2d 149,164 (5th Cir. 1988).

As the Third Circuit has explained, the prosecutor must not only actually pursue the ends of justice, but appear to do so as well. After noting that the prosecutor controls presentation of evidence and argument to the grand jury, it held that "[w]here the potential for abuse is so great . . . the obligation of the judiciary to protect against <u>even the appearance of unfairness</u> [is] correspondingly heightened." *United States v. Serubo*, 604 F.2d 807, 817 (3rd Cir. 1979) (emphasis added). The D.C. Circuit has similarly held that an independent prosecutor is "essential to the administration of justice." *In re Olson*, 818 F.2d 34, 43-44 (D.C. Cir. 1987).

To ensure criminal proceedings are fundamentally fair, the courts have invalidated criminal proceedings on due process grounds whenever, due to a variety of circumstances, a prosecutor has established some prior interest which might color his dealings in a case. *See, e.g.*, *Carter*, 907 F.2d at 488 (reversing convictions where prosecutors on loan from SEC were

not disinterested); *Brotherhood of Locomotive Firemen and Engineers v. United States*, 411 F.2d 312 (5th Cir. 1969) (reversing contempt conviction on due process grounds where a party's civil attorney also prosecuted the contempt); *Ganger v. Peyton*, 379 F.2d 709 (4th Cir. 1967) (overturning state assault conviction where prosecutor concurrently represented the defendant's wife, the alleged assault victim, in a concurrent divorce proceeding). The Ninth Circuit in *Martin v. United States*, 335 F.2d 945, 950 (9th Cir. 1964) noted that it had summarily reversed the convictions of certain alleged co-conspirators after a prosecutor who had represented another severed co-conspirator served on the Government's prosecution team for the non-severed defendants.

Courts have protected individuals from prosecutorial conflicts of interest even in the investigative stage of case. For instance, the Sixth Circuit in *In re Grand Jury Subpoenas*, 573 F.2d 936 (6th Cir. 1978) reversed on due process grounds the district court's refusal to grant an order protecting General Motors from a grand jury investigation because the IRS attorney deputized to conduct the criminal investigation "ha[d] an axe to grind and [w]as more interested in justifying his previous [IRS] investigations, his recommendations, and the conduct of IRS agents than in protecting GM against unfounded criminal prosecution." *Id.* at 943.

Moreover, because "justice must satisfy the appearance of justice," *In re Murchison*, 349 U.S. 133, 136 (1955) (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)), these courts granted the relief requested without finding it necessary to examine or conclude in fact whether the prosecutor could set aside his or her own interests and pursue simply the ends of justice. Accordingly, the Supreme Court in *Young* found that an impermissible conflict of interest arises if the prosecutor's extra-prosecutorial interest

"theoretically could have created temptation" to serve that other interest. *Young*, 481 U.S. at 806 (emphasis added). Indeed, where a diverting influence "created opportunities for conflicts to arise, [they] . . . create[] at least the appearance of impropriety." *Id.* (emphasis in original). Thus, in short, as a public prosecutor, U.S. Attorney Lampton is subject to "standards of conduct more stringent than those applied to private lawyers." *United States v. Judge*, 625 F. Supp. 901, 902 (D. Hawaii 1986); *see also Carter*, 907 F.2d at 488 (reversing convictions where there existed "a potential for conflict and an appearance of impropriety").

In a similar vein, the Fifth Circuit aptly stated:

> No one would suggest now that in any way these fine lawyers submerged one interest over the other. But that is not the point. The point is that those conflicting claims of undivided fidelity present subtle influences on the strongest and most noble of men. The system we prize cannot tolerate the unidentifiable influence of such appeals.

Locomotive Firemen, 411 F.2d at 319 (emphasis added).[7]

U.S. Attorney Lampton's actual and apparent interests set forth herein provide the textbook example of a very interested prosecutor whose resulting investigation and charges violate the due process clause.

Discerning prosecutorial bad acts to support a conflict charge is obviously difficult in that the conflict may play out more through acts the prosecutor does not undertake (*e.g.*, not expanding the investigation to others allied with the prosecutor, not seeking a settlement on reasonable terms, not seeking to charge the accused as others have been charged for similar acts), rather than through acts the prosecutor did undertake. *See Young*, 481 U.S. at 807

[7] Indeed, so fundamental are the accused's right to a fair criminal process and the attendant preservation of the grand jury's "structural protections," that the Supreme Court has held that no error compromising these rights can be harmless. *See, e.g.*, *Bank of Nova Scotia*, 487 U.S. at 256-57; *cf.*, *Rose v. Clark*, 478 U.S. 570, 578 (1986), *on remand*, 822 F.2d 596 (6th Cir. 1987) ("harmless-error analysis thus presupposes" a fundamentally fair trial).

(prosecution "exercises considerable discretion" to make such decisions "outside the supervision of the court"). This "non-conduct" exists throughout this investigation. Nonetheless, there are also the actions that U.S. Attorney Lampton and others actually did undertake that reflect or have the appearance of reflecting decisions made for other than the impartial pursuit of justice. That conclusion is inescapable:

- when Senator Lott could state he was assured that the investigation did not implicate his family; or
- when Mr. Scruggs stated he did not need an immunity agreement or an attorney in the face of potentially serious charges; or
- when those making political contributions other than Mr. Minor have not been prosecuted; or
- when the lead agent was transferred off the case after apparently inquiring about relationships closer to the U.S. Attorney than Mr. Minor enjoyed; or
- when the new FBI agent assigned to the case was a financial supporter of the opponent of Judge Diaz; or
- when the U.S. Attorney's family had been sued by Mr. Minor; or
- when Attorney General Moore accompanied Mr. Scruggs to the grand jury hearing; or,
- finally, when the U.S. Attorney wrote an indictment charging draconian RICO violations against Mr. Minor and other serious felony charges against three members of the bench, but has asked for no indictments against anyone else and was able to handle his own campaign committee's election law violations as administrative and civil fines.

B. Only A Disinterested Prosecutor Can Insure That A Grand Jury Is Impartial, Again Something That Did Not Occur In This Case.

The Supreme Court has held that an impartial grand jury is integral to the Fifth Amendment's mandate that a federal felony case be brought only by indictment, stating:

> [W]e have insisted that the grand jury remain "free to pursue its investigations unhindered by external influence or supervision so long as it does not trench upon the legitimate rights of any witness called before it." . . . Recognizing this tradition of independence, we have said that the Fifth Amendment's "constitutional guarantee presupposes an investigative body 'acting independently of either prosecuting attorney or judge' . . . ."

United States v. Williams, 504 U.S. 36, 48-49 (1992) (emphasis in original omitted) (citations omitted).

The prosecutor must preserve the grand jury's impartiality even though he or she has a multitude of opportunities to do otherwise. As the Supreme Court explained in *Sells Engineering*, the prosecutor ordinarily tells the grand jury what to investigate, gathers the evidence and witnesses for the grand jury, "draw(s) up and supervise(s) the execution of subpoenas" and "commands the investigative forces" on the grand jury's behalf, and even is expected to "advise the lay jury on the applicable law." *Sells Engineering*, 463 U.S. at 430 & 430 n.13. Moreover, "[a] prosecutor exercises considerable discretion in matters such as the determination of which persons should be targets of investigation . . . ." *Young*, 481 U.S. at 807. Notably, therefore, the prosecutor's power to direct the grand jury's investigation toward certain matters commands an attendant ability to direct the grand jury's attention away from certain other matters or individuals. "These decisions, critical to the conduct of a prosecution, are all made outside the supervision of the court." *Id.* Nonetheless, as the Supreme Court has explained that in a federal criminal case, "[i]f [the Court] has any duty to perform . . . it is to see that the waters of justice are not polluted." *Mesaroh v. United States*, 352 U.S. 1, 14 (1956).

The Supreme Court has long recognized that a grand jury may be twisted to personal, political, and partisan ends in derogation of an accused's constitutional right to an impartial grand jury. As Chief Justice Warren explained, "[p]articularly in matters of local political corruption and investigations is it important that . . . the real issues not become obscured to the grand jury." *Wood v. Georgia*, 370 U.S. 375, 390 (1962). The Supreme Court in *Wood* reversed a sheriff's contempt conviction when his jurisdiction's judges

attempted to employ criminal contempt procedures to divert local judicial and public scrutiny to the sheriff and away from themselves and their political interests. *Id.* at 379-82. Here, too, the evidence lends reasonable credence to the appearance that U.S. Attorney Lampton may have attempted to divert the grand jury's attention from his and his associates' personal, political, and reputational interests.

Further, a district court also dismissed for, inter alia, grand jury bias reasons an indictment where the specially deputized prosecutor's actions rendered tangible his conflict of interest. *See United States v. Gold*, 470 F. Supp. 1336 (N.D. Ill. 1979). In that case, the prosecutor's affiliation with the Environmental Protection Agency and his actions as a special prosecutor which appeared to further the interests of the EPA (as opposed to Department of Justice) interests and "led him to disregard his duties he owed . . . to the United States Department of Justice . . . and to the defendants in this case as to their rights secured by the Constitution of the United States." *Id.* at 1351; *see also In re November 1979 Grand Jury*, 616 F.2d 1021, 1026 (7th Cir. 1980) ("the heart of *Gold* was a concern that a biased and errant prosecutor had improperly manipulated the grand jury investigation in order to reach a predetermined result . . . ."); *see also Carter*, 907 F.2d at 488.

U.S. Attorney Lampton's appearance of serving other masters (his party or his former colleagues or political associates) has similarly, fundamentally skewed the grand jury proceedings in derogation of Mr. Minor's Fifth Amendment right to an impartial grand jury.[8]

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[8] Additionally, as was the case with the due process violations addressed above, Mr. Minor's right to an impartial grand jury is so "fundamental" (*Rose*, 478 U S at 577), that the error cannot be harmless. *Bank of Nova Scotia*, 487 U.S. at 257; *Cf. United States v. Fisher*, 871 F.2d 444 (3rd Cir. 1989) (claim that prosecutor vitiated the grand jury's independence by allegedly violating the ethical rules' confidentiality provisions in presentation of the evidence to the grand jury "goes to the fundamental fairness of the criminal proceedings" and thus cannot be rendered harmless under *United States v.*

(Cont'd on following page)

Thus, as did the courts in *Wood* and *Gold*, this Court should terminate these proceedings and dismiss the indictment as irreparably tainted[9].

C. U.S. Attorney Lampton's Lack Of Impartiality And Disinterest Is Evidenced By The Fact That His Conduct In This Case Violates Specific Justice Department Rules.

It may be difficult in some cases to show that a prosecutor's involvement in an investigation and case is so biased or interested or has the appearance of such partiality that a due process violation has occurred. This is not one of those cases. The Department of Justice's own rules and regulation and various codes of professional ethics provide clear lines which the U.S. Attorney crossed over when he opened, supervised, participated, drafted charges for and appeared in this case despite his political and professional relationships.

Section 45.2(a)[10] of Title 28 of the Code of Federal Regulations, the Department of Justice's principal set of rules, provides that no prosecutor "shall participate in a criminal investigation or prosecution if he has a personal or political relationship" with:

> (1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or

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(Cont'd from preceding page)
Mechanik, 475 U.S. 66 (1986), by a subsequent petit jury guilty verdict); *United States v. Taylor*, 798 F 2d 1337 (10th Cir. 1986) (same); *Wallach*, 870 F.2d at 906 (same).

[9] At this juncture, it is thus the indictment itself, not merely Mr. Lampton's involvement, that aggrieves Mr. Minor. Indeed, U.S. Attorney Lampton's leading role in this investigation in directions dictated by or appearing to involve his own interests have tainted all those who have followed his direction. At some earlier point, Mr. Lampton might have been able to recuse himself and allowed his office to have handled the case. *See, e.g., In re Grand Jury Proceedings*, 700 F. Supp. 626, 630 (D.P.R. 1988) (United States Attorney timely recused himself based on potential emotional conflict of interest), and *Caggiano v. United States*, 660 F.2d 184, 187-88 (6th Cir. 1981), *cert. denied*, 455 U.S. 945 (1982) (AUSA properly preemptively walled from participation). The time for any corrective action by Mr. Lampton to be effective, however, has long since passed.

[10] The Department of Justice's "Ethical Standards for Attorneys for the Government" reflect this high standard. In 28 C.F.R. § 77.1(a), those standards state that "[t]he Department of Justice is committed to ensuring that its attorneys perform their duties in accordance with the highest ethical standards."

> (2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

For the purposes of Section 45.2(a):

> (1) 'Political relationship' means a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof; and
>
> (2) 'Personal relationship' means a close and substantial connection of the type normally viewed as likely to induce partiality . . . . Whether relationships (including friendships) of an employee are 'personal' must be judged on an individual basis with due regard given to the subjective opinion of the [prosecutor].

28 C.F.R. § 45.2(c) (emphasis added).

Applying these standards to the investigation underlying the indictment, U.S. Attorney Lampton should have disqualified himself at the outset of the investigation. As one starting point, the U.S. Attorney himself was involved in a political campaign in which is campaign committee was cited for contribution and other violations and yet he was able to address these law violations as civil and administrative matters. How can it ever appear correct that he was involved (let alone leading) an investigation where he made decisions to handle allegations of political wrongdoing by his party's opponents in a different fashion?

Were that not a conflict enough, it has to be the case that the U.S. Attorney knew that Mr. Minor had represented plaintiffs against business interests held by the Lampton family. *See infra* IV., A., at 10, n. 2. Obtaining multi-million results for clients in two separate cases in which negligence and other wrongdoing was alleged by Mr. Minor against Mr. Lampton's family's interest is reason all by itself to require Mr. Lampton to stay out of

any decision concerning Mr. Minor, but there he stood announcing how his family's nemesis was a federal felon.[11]

Furthermore, the case involved officials in the State where the U.S. Attorney had run for office himself, a particular judicial election in which a candidate was closely aligned to him, a grand jury subject who was the candidate who had opposed his ally, another subject who was an attorney who had provided a great deal of support against his ally, and others still with whom he was politically connected. Individually or together, these associations and connections falls squarely within the definition of "personal relationship" contained in § 45.2(c).

To begin with, there can be little doubt that U.S. Attorney Lampton's relationship with Keith Starrett was "a close and substantial connection of the type normally viewed as likely to induce partiality." *See* 28 C.F.R. § 45.2(c)(2). While District Attorney, Mr. Lampton and Assistant District Attorney Starrett worked for years together in Pike County. One of the subjects of the investigation, Justice Diaz, was Mr. Starrett's opponent, and another subject, Mr. Minor, was a close friend and substantial supporter of Mr. Starrett's opponent. How can it pass any actual or appearance test for Mr. Lampton to be involved in a case with these individuals?

Second, the case involved other subjects, ostensibly other members of the Mississippi bar with whom U.S. Attorney Lampton had political or personal relationships. No doubt the investigation reviewed the conduct of Mr. Scruggs. Whether precisely the same

[11] U.S. Attorney Lampton was well aware that the DOJ Manual for U.S. Attorneys directed someone in his position to avoid being in situations in which he had a personal interest. *See* U.S.A.M. 3-2.170 ("If a conflict of interest exists because a United States Attorney has a personal interest in the outcome of the matter or because he/she has or had a professional relationship with parties or counsel, or for other good cause, he/she should recuse himself/herself.").

or simply analogous to Mr. Minor's conduct, Mr. Scruggs signed loan guarantees to a judge before whom he had a matter pending, made payments of principal/interest, paid off some or all of that guaranty, used an intermediary to pay back a loan to that judge, was co-owner of the condo used by Justice Diaz, and was involved in the loan to Judge Teel. As previously noted, Mr. Scruggs is a very avid supporter of the national and state Republican Party. Mr. Lampton himself ran for high office in Mississippi as a Republican. Mr. Scruggs is also related to Senator Lott, who felt close enough to this investigation that he felt compelled to comment on it to the press. Independently of Mr. Scruggs, U.S. Attorney Lampton has a "personal relationship" with Senator Lott.[12] The two campaigned together during Lampton's twice-failed run for the U.S. House of Representatives. Significantly, Lampton would not hold his position as U.S. Attorney without the support (if not the nomination to the White House) of Senator Lott. Lampton's Chief of Staff and ethic adviser, Stan Harris, is a former aid to Senator Lott. The Senate, where Mr. Lott was Leader, had to confirm Mr. Lampton. It is readily apparent that any investigation about which Senator Lott felt compelled to comment and which had a possible impact on his political party and a family member was one in which there was a specific and substantial interest that would be effected such that Mr. Lampton should not have been involved.

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[12] In addition to Mr. Minor's own quarrels with the Republican Party, Mr. Minor's father, a noted journalist and columnist, has often taken public issue with and criticized Senator Lott. *See, e.g.*, Ex. 55 (*Enterprise Journal*, "Lott Friend Sentenced" (April 21, 1993)). U.S. Attorney Lampton chose to include reference to a defamation case involving Mr. Minor's father in the indictment even though Mr. Minor was not himself involved in that case. Ex. 1 (Indictment, ¶ 12, at 20). His decision to do so seems gratuitous and retributive and is something else he should explain to the Court.

Depending on the extent to which he worked with or coordinated with the State Attorney General Mike Moore, U.S. Attorney Lampton certainly knew of Mr. Moore's relationship with Mr. Scruggs. It was enough to cause Mr. Moore to do the right thing by removing himself from the case. Yet, the U.S. Attorney did not take that same course and may have continued to share information with the Attorney General. He certainly could have known that it was the Attorney General who brought Mr. Scruggs to the grand jury.

That U.S. Attorney Lampton erred by staying involved and thereby tainted this case is underscored by the decision he made to recuse himself when conflicts of interest questions arose in the investigation of WorldCom, a Mississippi corporation. Mr. Lampton disqualified himself because of "conflicts" that arose because he had received campaign contributions from WorldCom employees in his unsuccessful bid for Congress. The case was then moved to another office. Ex. 56 (*USA Today*, "N.Y. Prosecutors to Lead WorldCom Case" (July 11, 2002)). The conflicts in this matter are more aggravated that the WorldCom case, due to the many personal interests involved other than campaign contributions.

D. U.S. Attorney Lampton's Participation In The Investigation Also Violated The State Disciplinary Rules Of Professional Conduct.

The Mississippi Disciplinary Rules of Professional Conduct (2002 ed.) prohibited U.S. Attorney Lampton's involvement in this investigation as well. Department of Justice regulations, 28 U.S.C. § 508B(a), provide that "[a]n attorney for the Government shall be subject to the State laws and rules, and local Federal rules, governing attorneys in each State where such attorney engages in that attorney's duties . . . ."[13] Mississippi Rule 3.8 (Special

[13] The Supreme Court in *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787 (1987), applied these ethical provisions to federal prosecutors (*id. at* 804 n.14), and, as described herein, reversed a defendant's contempt conviction based on their breach. *Id.* at 814.

Responsibilities On The Prosecutor) places heightened requirements on prosecutors. The Commentary to Rule 3.8 provides:

> A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.

As part of the prosecutor's special responsibilities, the Commentary to Rule 3.8 further provides that the prosecutor comply with "Rule 3.3(d), governing *ex parte* proceedings, among which grand jury proceedings are included." *Id.* (emphasis added). In that regard, Rule 3.3 (Candor to the Tribunal) (emphasis added) provides, in part:

> In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Finally, the Commentary to Rule 3.8 (Special Responsibilities On The Prosecutor) provides that "[a]pplicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4 (Professional Misconduct).

In light of the substantial body of evidence set forth herein, it is beyond peradventure that U.S. Attorney Lampton failed to inform the grand jury of all adverse facts known to him that would enable the grand jurors to make an informed decision on whether or not to single out Mr. Minor for prosecution. These adverse facts to the prosecution — which mitigate against indictment of Mr. Minor — include, but may not even be limited to:

(a) the extent of political contributions by pro-business organizations to tort reform candidates and Mr. Minor's activism against this issue;
(b) how the debate over "tort reform" was involved in the races in question in light of Mr. Minor's strong opposition and the strong support of President Bush, Senator Lott, and the Republican Party, all of whom or which Mr. Lampton was connected;
(c) Mr. Lampton's relationship with judicial candidate Starrett, Justice Diaz's opponent;

(d) the reasons for the transfer of Special Agent Campbell off the investigation and his replacement by Special Agent Rust;
(e) Special Agent Rust's political contributions to the Starrett campaign against Justice Diaz;
(f) the Republican ties between and among Mr. Lampton, Mr. Scruggs, and Senator Lott;
(g) the relationship that existed between the Attorney General Moore and Mr. Scruggs;
(h) the fact that Mr. Minor had sued businesses connected to the Lampton family;
(i) the critical columns Mr. Minor's father had written about Mr. Lampton's patron Senator Lott; and
(j) Mr. Lampton's own brush with FECA violations and the civil and administrative treatment he received versus the felony charges he was seeking.

The extent of such omissions to the grand jury is systemic and substantial and would constitute violations of Mississippi Disciplinary Rules of Professional Conduct.

E. This Court May And Should Employ Its Supervisory Power To Dismiss This Indictment Based On Mr. Lampton's Lack Of Disinterest And The Resulting Taint That Has Permeate The Charges In This Case.

The Supreme Court in *United States v. Williams*, 504 U.S. 36, 48-49 (1992), comprehensively examined federal courts' authority to employ their inherent supervisory powers and confirmed that there are circumstances in which a court should employ these powers to remedy violations of federal and local rule ethical standards applicable to prosecutors. These supervisory powers authorize a court to "prevent parties from reaping benefit or incurring harm from violations of substantive or procedural rules (imposed by the Constitution or laws) governing matters apart from the trial itself . . . ." *Williams*, 504 U.S. at 46 (citations omitted). A federal court exercising its supervisory powers further "may, within limits, formulate procedural rules not specifically required by the Constitution or the Congress", *Bank of Nova Scotia*, 487 U.S. at 254 (citation omitted); provided, the court does so as a "means of enforcing or vindicating legally compelled standards of prosecutorial conduct before the grand jury . . . ." *Williams*, 504 U.S. at 46-47 (emphasis added).

A federal prosecutor's ethical obligations established and applicable pursuant to the federal law, Department of Justice regulations, and state bar rules comprise precisely such "legally compelled standards of prosecutorial conduct." Thus, the Supreme Court authorizes this Court to "enforce[e]" violations of these rules which effect the grand jury pursuant to its supervisory power. *Id.* Indeed, the Supreme Court in *Young* reversed the defendant's contempt conviction pursuant to its supervisory powers because of the prosecutor's conflict of interest (and appearance thereof) under applicable disciplinary rules. *See Young*, 481 U.S. at 809. The U.S. Attorney's lack of disinterest in this case should fair no better.

II. THE CHARGES FILED AGAINST MR. MINOR EVIDENCE AN EQUAL PROTECTION VIOLATION AS UNCONSTITUTIONAL SELECTIVE PROSECUTION AND MUST BE DISMISSED.

From an interested prosecutor can come decisions that do not hold up to court or public scrutiny. None is a better example than when a prosecutor sees conduct by those with whom he is aligned as proper but sees that same conduct committed by his opponents and adversaries as crimes. This is what occurred in this case.

A. Following Supreme Court Direction The Fifth Circuit Prohibited The Type Of Selective Prosecution That Occurred In This Case.

By definition, a prosecutor has discretion to charge, but a selective prosecution claim, based on concepts of equal protection, asks a court to exercise judicial power over what has been called "the special province" of the executive. *Heckler v. Chaney,* 470 U.S. 821, 832 (1985). Accordingly, if a defendant demonstrates that the administration of criminal law is "directed so exclusively against a particular class of persons . . . with a mind so unequal and oppressive" then that prosecution amounts to "a practical denial" of equal protection under the law. *Yick Wo v. Hopkins,* 118 U.S. 356, 373 (1886); *see also United States v. Armstrong,* 517 U.S. 456, 464 (1996).

The existing prohibition against selective prosecution in the Fifth Circuit has its origins in a Second Circuit decision, *United States v. Berrios,* 501 F.2d 1207 (2d Cir. 1974). In *Berrios*, the Second Circuit considered a claim of selective prosecution on the grounds that the defendant was chosen for prosecution because he was among the few Teamsters officials who were outspoken in their support of Senator McGovern for President against President Nixon. The defendant also claimed that he was singled out for prosecution because at the time of his indictment he was leading an effort to unionize the Marriott restaurant chain, a business that apparently had close ties to the Nixon Administration. *Id.* at 1210. The Second Circuit opined that "[n]othing can corrode respect for a rule of law more than the knowledge that the government looks beyond the law itself to arbitrary considerations, such as race, religion or control over the defendant's exercise of his constitutional rights, as the basis for determining its applicability." *Id.* at 1209 (citing *Oyler v. Boles,* 368 U.S. 448, 456 (1962)). With interesting reference to the facts in this case, the court stated that "[s]elective prosecution then can become a weapon used to discipline political foe and the dissident. *Id.* (citing *United States v. Falk,* 479 F.2d 616 (7th Cir. 1973) (emphasis added); *United States v. Steel,* 461 F.2d 1148 (9th Cir. 1972)). Finally, "[t]he prosecutor's objective is then diverted from the public interest to the punishment of those harboring beliefs with which the administration in power may disagree." *Id.* This motion involves exactly such a circumstance.

The Fifth Circuit, in its most detailed analysis of the grounds for prohibition of selective prosecution, noted the importance of judicial intervention in such cases as a basic part of our constitutional form of governance. In *United States v. Johnson,* 577 F.2d 1304, 1307 (5th Cir. 1978), the court held "the judiciary has always borne the basic responsibility

for protecting individuals against unconstitutional invasions of their rights by all branches of government." (quoting *Falk*, 479 F.2d at 624). The court observed that "[t]he concept that the Constitution limits the prosecutor's discretion is not new to our jurisprudence. Nearly a century ago the Supreme Court concluded that the administration of laws 'with an evil eye and an unequal hand, so as [to] practically to make unjust and illegal discrimination between persons in similar circumstances' constituted a denial of equal protection of the laws." *Id.* (quoting *Yick Wo*, 118 U.S. at 373-74). Following an historical analysis, the court held "[t]herefore in the rare situation in which the decision to prosecute is so abusive of this discretion as to encroach on constitutionally protected rights, the judiciary must protect against unconstitutional deprivations." *Id.*

In *Johnson*, the Fifth Circuit refused to defer to abusive prosecutorial discretion and reiterated that it was "emphatically the province and duty of the judicial department to say what the law is." *Id.* The court then expressly recognized the *Berrios* two-part test for selective prosecution claims:

> (1) that, while others similarly situated have not generally been proceeded against because of conduct of the type forming the basis of the charge against him, he has been singled out for prosecution, and (2) that the government's discriminatory selection of him for prosecution has been invidious or in bad faith, i.e. based upon such impermissible considerations as race, religion, or the desire to prevent his exercise of constitutional rights. These two essential elements are sometimes referred to as 'intentional and purposeful discrimination.'

Johnson, 577 F.2d at 1309 (quoting *Berrios*, 501 F.2d at 211).

B. The Prosecution Of Paul Minor Is Impermissibly Selective Because Others Committing The Same Acts Have Been Overlooked, Leaving Mr. Minor's Being Targeted As A Result Of His Political And Policy Advocacy.

The two-part test to find selective prosecution has been applied to defendants asserting that they were prosecuted for their constitutionally protected political activity. In

United States v. Green, 697 F.2d 1229 (5th Cir. 1983), for example, the defendants argued that they were the subject of selective prosecution because they were only six individuals out of approximately three hundred air traffic controllers who were indicted for striking against the government. *Id.* at 1234. The court applied the two-part test as follows: "To prevail on a selective prosecution challenge a defendant must first make a *prima facie* showing that he has been singled out for prosecution while others similarly situated and committing the same acts have not." *Id.* (citing *United States v. Rice*, 659 F.2d 524, 526 (5th Cir. 1981); *United States v. Tibbetts*, 646 F.2d 193, 195 (5th Cir. 1981); *United States v. Lichenstein*, 610 F.2d 1272, 1281 (5th Cir. 1980), *cert. denied*, 447 U.S. 907 (1980)). The court further held that "[i]f a defendant meets this first showing, he must then demonstrate that the government's discriminatory selection of him for prosecution has been invidious or in bad faith and that is rests upon such impermissible considerations as race, religion or the desire to prevent his exercise of constitutional rights." *Id.* (citing cases).

The *Berrios* test has been applied to defendants exercising their rights in a variety of contexts. *See United States v. Steele*, 461 F.2d 1148 (9th Cir. 1972) (indictment dismissed against vocal opponent of federal census); *Falk*, 479 F.2d 616 (indictment dismissed against vocal opponent of Vietnam conflict); *United States v. Hastings*, 126 F.3d 310 (4th Cir. 1997) (defendant a prominent Republican Party supporter). On this record, Mr. Minor's "crime" appears not to be racketeering, but being an active Democrat and a vocal critic of tort law reform who made political contributions and provided help to judicial candidates in accordance with his philosophy, but who did not have sufficient personal and political ties to public office holders, including the U.S. Senator or the U.S. Attorney.

In *Greene,* 697 F.2d at 1235, the Fifth Circuit observed that it is unclear what the "precise nature of the showing" should be to make *prima facie* showing of discriminatory purpose. For guidance, the court turned to two cases in which indictments were dismissed for impermissible selectivity, *Falk,* 479 F.2d 617 and *Steele,* 461 F.2d 1148. After close examination of the facts and holdings in those cases, the court held "[i]n *Steele* and *Falk,* the defendants established that they had engaged in protected first amendment activity, that they had been singled out for prosecution although the government was aware that others had violated the law, and that the government had followed unusual discretionary procedures in deciding to prosecute." *Id.* at 1236 (emphasis added).

In *United States v. Hoover*, 727 F.2d 387, 391 (5th Cir. 1984), the Fifth Circuit reiterated its holding that evidence of "unusual discretionary procedures" was a sufficient showing of invidious intent. There, the court distinguished the successful selective prosecution claims in *Steele* and *Falk* in holding against Hoover's selective prosecution claim. "Unlike the defendants in *Steele* and *Falk,* and like the defendant in *Greene*, Hoover has failed to show that the government followed any special or unusual procedures in deciding to prosecute him rather than the other strike leaders initially targeted." *Id.* (emphasis added).

1. Mr. Minor Was Singled Out For Prosecution Although The Government Was Aware of Others Who Engaged In The Same Conduct.

We have put before this Court a record showing "the 2000 judicial elections were scandalous in the millions of dollars pumped into them," Ex. 36, in campaign contributions to candidates to the bench during the pitched contest over Mississippi tort law reform. The record has illustrated multiple forms of contributions: the Chamber of Commerce's million dollar issue advocacy contributions, numerous other trial attorneys with interests before the court making thousands of dollars of contributions in judicial elections, Mr. Scrugg's record

setting soft-dollar contribution to the Republican Party and additional contributions from members of his family, Special Agent Kevin Rust's contribution to the political opponent of Oliver Diaz, etc. The record even establishes that Mr. Scruggs participated in some of the very transactions for which Mr. Minor is under indictment.

Had the prosecutors wanted to filter the conduct of others through the same view of corrupt motives they used for Mr. Minor, there were plainly many other individuals who were similarly situated, but none of them was prosecuted. While the government can never prosecute all the people who commit a certain offense, "the credibility of a stated desire to maximize deterrence by 'creating an example' is severely undercut by the subsequent failure to seek prosecution of those similarly situated." *United States v. Correa-Gomez,* 160 F. Supp. 2d 748, 754 (E.D. Va. 2001) (indictment dismissed for selectivity). By any legal standard, Mr. Minor's being singled out satisfies the first prong of the prohibition against selective prosecution.

2. Mr. Minor Has Demonstrated "Special Or Unusual" Procedures Underlying The Prosecutorial Decision To Indict Him.

As the existence of "special or unusual" procedures is the red flag for improper prosecutions, one can hardly fathom an investigation that utilized more special or unusual procedures. At the outset, the experienced F.B.I. agent who may have wanted to broaden the inquiry to all those involved seems to have been taken off the case and replaced by a less experienced agent who had made political contributions to one of Mr. Minor's and Oliver Diaz's political opponents — Keith Starrett. The federal prosecutors either did or did not coordinate with the State Attorney General who at some point appears to have accompanied a subject of the investigation to the grand jury. The U.S. Senator who was instrumental in selecting the U.S. Attorney and a relative of one of the subjects spoke about the investigation

and case to the media as if he had a pipeline to the prosecutors. The U.S. Attorney strained mightily to keep Mr. Scruggs' name out of the indictment and described him generically despite the fact that Mr. Scruggs was involved in the actions forming the basis for the charges against Mr. Minor. Finally, the U.S. Attorney reached deep in the statute books to turn alleged state campaign misdemeanors into federal RICO counts when his own campaign violations were treated administratively.

As a recent case dismissing an indictment for selectivity makes clear, "[t]he question of discriminatory purpose is difficult to probe." *Correa-Gomez,* 160 F. Supp. 2d at 753. However, "[t]he inquiry is practical . . . . [and what] any official entity is 'up to' may be plain from the results its actions achieve or the results they avoid." *Id.* at 751 (quoting *Personnel Administrator of Massachusetts v. Feeney,* 442 U.S. 256, 279 (1979)). Here, it is clear even from the indictment itself, what the U.S. Attorney was "up to": insuring that an investigation that began broadly, encompassing many attorneys from both parties, ended up with an indictment solely against Mr. Minor.

3. Mr. Minor Has Established Reasonable Doubt As To The Constitutionality Of The Indictment Against Him Requiring, At The Very Least, An Evidentiary Hearing.

"A district court should grant a hearing on a defendant's selective prosecution claim if the defendant alleges sufficient facts to take the question past the frivolous state, and raises a reasonable doubt about the prosecutor's purpose." *United States v. Welliver*, 976 F.2d 1148, 1155 (8th Cir. 1992) (quotation omitted) (emphasis added).[14] While explaining that an

[14] The *Armstrong* court also observed that the Courts of Appeals had considered the required showing to establish entitlement to discovery, and had described this showing with a variety of phrases such as "colorable basis", "substantial threshold showing", "substantial and concrete basis" or "reasonable likelihood". *Armstrong,* 517 U.S. at 468. However, the court observed that the courts of appeals

(Cont'd on following page)

evidentiary hearing is not granted automatically, the Fifth Circuit has held that such a hearing should occur where a defendant present facts "sufficient to create a reasonable doubt about the constitutionality of his prosecution resulting from selective prosecution . . . ." *United States v. Webster*, 162 F.3d 308, 334 (5th Cir. 1998) (quotation omitted); *see also United States v. Jennings*, 724 F.2d 436, 445 (5th Cir. 1984); *United States v. Hayes*, 589 F.2d 811, 819 (5th Cir. 1979), *cert. denied*, 444 U.S. 847 (1979). The definitions of "reasonable doubt" that normally apply in criminal cases provide more than enough basis for the present motion to dismiss.[15] Would a person have a reason to at least question how Mr. Minor was selected, why others were left alone, why the U.S. Attorney stayed in when the Attorney General bowed out, why FBI agents were shifted around, and why campaign issues became racketeering? To ask the question is to answer it.

Following the reasoning of *Armstrong*, *Webster* and *Hayes*, and the Fifth Circuit's guidance on the meaning of "reasonable doubt," to avoid a hearing and the presumptions which flow from it, this Court would have to be "firmly convinced" of the procedures and decisions utilized in bringing this indictment and similarly convinced that there was "no real

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(Cont'd from preceding page)
exhibit a degree of consensus regarding the amount of evidence necessary to meet the requirement. The court held that "[t]he courts of appeals 'require some evidence tending to show the existence of the essential elements of the defense,' discriminatory effect and discriminatory intent." *Id.* (quoting *Berrios*, 501 F.2d at 1211). The court went on to hold that the required threshold is "a credible showing of different treatment of similarly situated persons." *Id.* at 470. Under any standard, Mr. Minor has provided more than necessary to merit a full inquiry.

[15] For example, the 2001 Fifth Circuit Pattern Jury Instructions states:

> A 'reasonable doubt' is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case. Proof beyond a reasonable doubt, herefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

United States Fifth Circuit District Judges Association, Pattern Jury Instructions (Criminal Cases) 16 (1990) (instruction 1.06).

possibility" of impermissible selectivity for a defendant. Such a finding could not be more contrary to this record including escalated charges, disparate treatment of people with similar conduct, distinctions which appear politically motivated, and a host of strange investigative acts from reassigned FBI agents to public pronouncements by the U.S. Senator. This is far from the case where "conclusional allegations of impermissible motive" are not sufficient to demonstrate the government acted in bad faith. *United States v. Ramirez*, 765 F.2d 438, 440 (5th Cir. 1985).

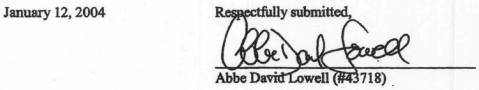
On this record, there is enough to actually dismiss the case. There certainly is enough to warrant a full evidentiary hearing to explore the disparities and curiosities.

CONCLUSION

Rather than taking the appropriate and prudent action, transferring the investigation of possible judicial corruption to an impartial office, U.S. Attorney Lampton and his office carried forward to charge Mr. Minor. They did so turning a blind eye to others similarly situated, but with better connections. They did so with actions ranging from transferring an FBI agent who asked the "wrong" questions to making alleged state campaign misdemeanors into a federal RICO charge. They did so coordinating with, or providing information to, others interested in the outcome of the case. This record demonstrates that an impermissibly interested prosecutor filed an impermissible selective prosecution. The actuality of these events or their strong appearance undermines confidence in the impartiality that occurred in this case, and confidence in the criminal justice system depends upon judicial intervention in this matter by dismissing the indictment, with or without a full evidentiary hearing.

Dated: January 12, 2004

Respectfully submitted,



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I hereby certify that on this 12th day of January, 2004, a true and correct copy of the foregoing Motion To Dismiss and Memorandum in Support thereof was served as set forth below to the following:

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Home Edition

Attorney firings echo in courts;
The divisive dismissals under Gonzales are being cited to challenge the motives of federal lawyers in legal cases.

BYLINE: Richard B. Schmitt, Times Staff Writer

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For months, the Justice Department and Atty. Gen. Alberto R. Gonzales have taken political heat for the purge of eight U.S. attorneys last year.

Now the fallout is starting to hit the department in federal courtrooms around the country.

Defense lawyers in a growing number of cases are raising questions about the motives of government lawyers who have brought charges against their clients. In court papers, they are citing the furor over the U.S. attorney dismissals as evidence that their cases may have been infected by politics.

Justice officials say those concerns are unfounded and constitute desperate measures by desperate defendants. But the affair has given defendants and their lawyers some new energy, which is complicating life for the prosecutors.

Missouri lawyers have invoked the controversy in challenging last year's indictment of a company owned by a prominent Democrat, on suspicion of violating federal wage and hour laws. The indictment, which came two months after the owner announced that she was running for political office, was obtained by a Republican U.S. attorney who also has been criticized because he charged workers for a left-leaning political group on the eve of the 2006 midterm election.

A lawyer in a child pornography case recently defended his client at a federal trial in Minnesota in part by questioning the motives of the Republican U.S. attorney, who has come under scrutiny in the congressional investigation into the prosecutor purge.

Lawyers for a former county official in Delaware who has been accused of corruption asked a judge in early May to allow them to subpoena the Justice Department and White House for documents to see whether political motives factored into charges being brought against the official. They cited the brewing controversy inside the Beltway.

"Those revelations dramatically reinforce the reasons to believe that considerations beyond mere law enforcement are behind this prosecution," the lawyers wrote.

The defendant, a once up-and-coming Democrat, was being prosecuted by the U.S. attorney in Wilmington, a Republican appointee.

In an inch-thick response, the U.S. attorney said nothing could be further from the truth, and said the attacks were "sullying the reputations of every prosecutor and law enforcement officer involved in this case," including more than a dozen career prosecutors and agents.

U.S. District Judge John P. Fullam eventually sided with the government, saying that if there were any improper motives for bringing the case, they would become evident at trial, in cross-examination. He also noted that the decision to bring the indictments was made in May 2004 -- "long before Mr. Gonzales became attorney general." (Gonzales' swearing-in was in February 2005.)

The defendant subsequently pleaded guilty to bank fraud.

The firing of the eight prosecutors last year has drawn attention because once appointed, U.S. attorneys traditionally have been allowed to serve until they resign or are ousted because of misconduct. New administrations routinely make changes as well.

Gonzales has defended the dismissals as justified for performance reasons, saying that some of the prosecutors failed to follow administration law-enforcement priorities.

But Democrats say there is evidence that the dismissals were part of a Bush administration effort to affect investigations in public corruption and voting cases that would assist Republicans. The probe has also shown that politics may have played a role in the hiring of some career Justice employees, in possible violation of federal law.

The controversy has drained morale from U.S. attorney offices around the country. And now, legal experts and former Justice Department officials say, it is casting a shadow over the integrity of the department and its corps of career prosecutors in court.

There has long been a presumption that, because they represented the Justice Department, prosecutors had no political agenda and their word could be trusted. But some legal experts say the controversy threatens to undermine their credibility.

"It provides defendants an opportunity to make an argument that would not have been made two years ago," said Daniel J. French, a former U.S. attorney in Albany, N.Y. "It has a tremendously corrosive effect."

Defense lawyers in political corruption cases often argue to juries that the prosecution was motivated by politics, especially when the prosecutor happens to be of a different political party than the defendant.

B. Todd Jones, a former U.S. attorney in Minneapolis, said such arguments are now "given credence in the public eye because they are seeing that maybe there were political decisions made. Any defense lawyer worth their salt is going to say this is a political prosecution that shouldn't have been brought."

The controversy may also be feeding anti-government feelings that many jurors bring to cases, even when defense lawyers do not overtly try to exploit the situation.

"It has become part of the background that jurors have in their minds when they deliberate," said Rep. Adam B. Schiff (D-Burbank), a former assistant U.S. attorney. "Jurors will think, 'Gee, is there a political motivation for this? Is it being brought

because the U.S. attorney wants to curry favor with the attorney general and keep his job?' Corruption cases are tough enough to prosecute without having to defend yourself against attack."

Lawyer Daniel Gerdts won an acquittal in federal court in Minneapolis last month for a New York computer consultant who had been accused of bringing child pornography into the United States on his way back from a business trip to Asia.

The defendant, who worked for a Japanese producer of adult videos, said he was hired to set up Web pages to market the videos and to search the Internet for pirated copies. He conceded he might have inadvertently downloaded child porn in the process of doing his job.

In court, Gerdts said prosecutors had failed to exercise proper discretion in bringing the charges. During his closing argument to the jury, he suggested a reason, alluding to published reports of upheaval in the office since Rachel Paulose had become U.S. attorney in 2006.

Paulose is believed to have gotten the posting with the help of Monica M. Goodling, a former Gonzales aide who recently testified under a grant of immunity from prosecution that she "crossed a line" by improperly allowing politics to influence hiring decisions at the Justice Department. Several senior prosecutors in the Minneapolis office resigned their management posts to protest Paulose's leadership.

The effect of Gerdts' courtroom remark was unclear. Government lawyers objected, and the judge told jurors to ignore the comment.

After the verdict, jurors said they did not believe the government's accusation that the defendant had intentionally downloaded contraband files.

In Springfield, Mo., defense lawyers are seeking a court order for evidence of improper contacts between former interim U.S. Atty. Bradley J. Schlozman and former Bush administration official Asa Hutchinson about the indictment last year of a company known as Managed Subcontractors.

Schlozman was questioned this month on Capitol Hill about his decision to obtain indictments of some former voter registration workers for the liberal Assn. of Community Organizations for Reform Now, or ACORN, less than a week before the midterm election last fall.

Managed Subcontractors had been the target of an investigation in 2002 by federal immigration agents working for the Department of Homeland Security. But its attorneys believed the case had gone dormant in the ensuing years.

Then, in June 2006, three months after his arrival as U.S. attorney, Schlozman secured an indictment. The principal owner of the company, Robbyn Tumey, had recently filed as a Democratic candidate for the state House in neighboring Arkansas.

Hutchinson, who was then in a hotly contested race for governor of Arkansas, was interested in the case because he was running on a get-tough-on-immigration platform, the court filing contends.

After her company was indicted, Tumey resigned as chairwoman of her local Democratic Party and withdrew from the Arkansas House campaign.

Hutchinson, who lost his bid for governor, could not be reached for comment. In an interview with the Arkansas Democrat-Gazette, he said there was "zippo" evidence linking him to the indictment decision.

Thomas Carver, Turney's lawyer, conceded that seeking the court order "involves some degree of speculation on our part because we obviously are not privy to the inner workings of the U.S. attorney's office." But he said his client had a right to the information.

"One of the reasons to file the motion was to determine if there is any cause for alarm," he said. "We are not in a position to make accusations ... but we would certainly like to know."

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October 22, 2007

ALABAMA VOICES: Not political tool

By Artur Davis

This year, serious questions have been raised about the integrity and even-handedness of the Department of Justice. An academic study has documented that the Bush Justice Department and its local branches have brought four times the number of cases against Democrats that they brought against Republicans.

On Tuesday, the House Judiciary Committee will convene a hearing on a question that has plagued the department for months: whether partisan political considerations influenced the prosecution of cases by local U.S. attorney's offices. As a lawyer who toiled for four proud years as a federal prosecutor, I can think of no scenario that would be more destabilizing to the fundamental value of equal justice under the law.

One of the cases under review is the prosecution of former Gov. Don Siegelman. Much of the press attention around this case has centered on the explosive allegations of a lawyer with Republican roots, Jill Simpson. She has claimed under oath that in late 2002, she participated in a conference call in which a high-ranking Republican bragged that the U.S. attorney's office run by his wife

would prosecute Siegelman; she has also testified that she was told of direct intervention by the president's adviser, Karl Rove, to prod the Department of Justice to approve an indictment against the former governor.

To date, no one has offered sworn testimony to rebut Simpson, who has twice made her claims under penalty of perjury.

It is true that the individuals whom Simpson links to a conspiracy to prosecute Siegelman are not exactly rogues; to the contrary, while they are all practitioners in the rough-hewn world of Alabama politics, they are well respected and have never been tinged by scandal.

Congress' efforts to prove or disprove Simpson, however, have been thwarted by two roadblocks: Rove's steadfast refusal to appear before Congress even though he is now a private citizen, and the Justice Department's insistence that it will not disclose any of the more than 600 documents in its possession regarding Siegelman's case.

But Simpson is far from the only source of the suspicions around the Siegelman case. There is the recent revelation in *Time* magazine that the prosecutors who indicted Siegelman failed to

aggressively pursue allegations of illegal campaign contributions against Republican officeholders, even though the source of the claims, Lanny Young, was one of their two principal witnesses against Democrat Siegelman.

While there is no proof whatsoever that Young was telling the truth when he cast aspersions on a senator and a current federal judge, the government's relationship with Young means one of two disturbing things: either that the lead prosecutors in an office run by a Republican were uninterested in claims that hit too close to home, or that prosecutors did investigate enough to debunk Young's other claims, but relied on his word against Siegelman anyway. It is a basic ethical obligation that prosecutors refrain from offering witnesses whom they believe are not credible.

In addition, one of Siegelman's former lawyers, the highly regarded former U.S. Attorney Doug Jones, has told House investigators that in late 2004, he was given strong hints that federal prosecutors in Montgomery were leaning away from bringing a case. Jones is expected to testify that later that year one of these prosecutors told him that the Office of Public Integrity at DOJ had ordered a complete re-evaluation of the Siegelman

matter. Note that this is the very time frame that Simpson says she was told Karl Rove contacted the same Office of Public Integrity to press for an indictment.

What else raises eyebrows about the role of politics here? Two of the U.S. attorneys who were fired in the Alberto Gonzalez scandal have testified that they lost their jobs after they refused demands from local Republicans that they prosecute Democrats who were political threats.

One U.S. attorney says that he was asked point-blank to indict Democratic activists in an effort to influence an election dispute in Washington state; the other says that two members of Congress pushed him to indict certain Democrats to offset Republican corruption allegations in the 2006 campaign cycle. These charges by highly decorated Republican prosecutors are revolting, but they are the same partisan taint alleged in the Siegelman scenario.

Such claims, of course, raise the possibility that if chief prosecutors were axed for not being partisan enough, that the Justice Department may have actively encouraged prosecutors who were willing to use their power as a political sword.

Without a doubt, the claims around Siegelman, most of which the jury disbelieved but some of which the jury credited, are as depressing as the misconduct he alleges led to his prosecution. Government cannot ever be for sale, and our Legislature should pass comprehensive reforms sharply limiting state campaign contributions; furthermore, the state should end Alabama's bipartisan tradition of influence peddling by enacting conflict of interest rules precluding governors from appointing contributors to state boards.

What I return to, however, is my moral conviction that the criminal justice system cannot be twisted into a weapon to eliminate or discredit political enemies. I have heard a few suggestions that there is a "no harm, no foul" rule, that if a defendant is actually guilty of wrongdoing, that an improper motivation is mitigated. I cannot agree.

If prosecutorial discretion is laced with any improper bias, from partisanship to race to self-interest, the results will be consistently more wrong than right -- and good people will have one more reason to shy away from a public life.

U.S. Rep. Artur Davis, D-Birmingham, represents Alabama's 7th Congressional District.

(don't worry, it'll
cost mere pennies)

Thursday, Oct. 04, 2007

Selective Justice in Alabama?

By Adam Zagorin

On may 8, 2002, Clayton Lamar (Lanny) Young Jr., a lobbyist and landfill developer described by acquaintances as a hard-drinking "good ole boy," was in an expansive mood. In the downtown offices of the U.S. Attorney in Montgomery, Ala., Young settled into his chair, personal lawyer at his side, and proceeded to tell a group of seasoned prosecutors and investigators that he had paid tens of thousands of dollars in apparently illegal campaign contributions to some of the biggest names in Alabama Republican politics. According to Young, among the recipients of his largesse were the state's former attorney general Jeff Sessions, now a U.S. Senator, and William Pryor Jr., Sessions' successor as attorney general and now a federal judge. Young, whose detailed statements are described in documents obtained by TIME, became a key witness in a major case in Alabama that brought down a high-profile politician and landed him in federal prison with an 88-month sentence. As it happened, however, that official was the top Democrat named by Young in a series of interviews, and none of the Republicans whose campaigns he fingered were investigated in the case, let alone prosecuted.

The case of Don Siegelman, the Democratic former Governor of Alabama who was convicted last year on corruption charges, has become a flash point in the debate over the politicization of the Bush Administration's Justice Department. Forty-four former state attorneys general — Republicans and Democrats — have cited "irregularities" in the investigation and prosecution, saying they "call into question the basic fairness that is the linchpin of our system of justice." The Department of Justice and the U.S. Attorney's office strongly deny that politics played any part in Siegelman's prosecution. They say the former Governor, who recently began serving the first months of his more than seven-year sentence, got exactly what he deserved. But Justice officials have refused to turn over documentation on the case requested by the House Judiciary Committee, which scheduled a hearing on Siegelman's prosecution for Oct. 11.

Now TIME has obtained sensitive portions of the requested materials, including FBI and state investigative records that lay out some of Young's testimony. The information provided by the landfill developer was central to roughly half the 32 counts that Siegelman faced for allegedly accepting campaign contributions,

money and gifts in exchange for official favors. (Siegelman was acquitted on 25 of those counts and convicted on seven. Young pleaded guilty to bribery-related charges and, in recognition of his cooperation with the government, received a short two-year sentence and fine.) But what Young had to say about Sessions, Pryor and other high-profile Alabama Republicans was even more remarkable for the simple fact that much of it had never before come to light.

The Young transcripts will probably add fuel to charges that the Bush Administration pursued selective justice in Alabama. Leura Canary, the U.S. Attorney whose office drove Siegelman's prosecution, is married to Bill Canary, Alabama's most prominent political operative and a longtime friend of Karl Rove's. In May an Alabama lawyer and Republican activist named Dana Jill Simpson gave a notarized statement that she heard Canary say Rove "had spoken with the Department of Justice" about "pursuing" Siegelman, with help from two of Alabama's U.S. Attorneys. Bill Canary called her charge "outrageous," and other alleged participants in the phone conversation issued similar denials. (The White House declined to comment, citing Siegelman's pending appeal.) But last month Simpson testified behind closed doors before the House Judiciary Committee. Sources tell TIME that, under penalty of perjury, she repeated her allegations about Canary and Rove.

Alabama is as red a state as the clay in its earth. After the years of rule by Southern Democrats, Republicans have now taken up residence in the Governor's mansion, as well as most statewide offices and congressional seats. In the 1990s Rove helped orchestrate a G.O.P. near sweep of the Alabama Supreme Court.

In this new Republican landscape, Siegelman emerged as one of the few Democratic stars, winning the Governor's race in 1998. He lost the seat in a close and contested race in 2002, but polls in 2003 showed that he had a good chance of recapturing the governorship. Then came the first indictment from the U.S. Attorney in Birmingham, charging Siegelman with using his position to rig a state bidding process. A judge dismissed the case in 2004 for lack of evidence. Just as Siegelman was preparing to run for Governor again, a second round of charges was brought in 2005 by the U.S. Attorney's office in Montgomery. His trial in 2006 overlapped with Alabama's Democratic primary, in which Siegelman had initially been a heavy favorite.

The investigation into Siegelman began as an inquiry into a contract held by Young to build a state warehouse in Alabama. Young was a well-liked figure in Montgomery who, by his own account, was in the habit of handing out cash, checks, rides on his private airplane and other goodies to members of both political parties. In return, he apparently hoped to receive favorable treatment for his garbage dumps and other lucrative state-related business.

Young testified that he had furnished Siegelman with an all-terrain vehicle and a motorcycle, lavishing money on the Governor and his aides. But he was an equal-opportunity influence monger. Early in the investigation, in November 2001, Young announced that five years earlier, he "personally provided Sessions with cash campaign contributions," according to an FBI memo of the interview. Prosecutors didn't follow up that surprising statement with questions, but Young volunteered more. The memo adds that "on one occasion he [Young] provided Session [sic] with $5,000 to $7,000 using two intermediaries," one of whom held a senior position with

Sessions' campaign. On another occasion, the FBI records show, Young talked about providing "$10,000 to $15,000 to Session [sic]. Young had his secretaries and friends write checks to the Sessions campaign and Young reimbursed the secretaries and friends for their contributions."

If true, Young's statements describe political money laundering that would be a clear violation of federal law. In 1996, when Young said he had made the contributions, it was illegal to give a candidate more than $1,000 for a primary or general campaign. None of the individuals Young named as his intermediaries in making the donations are listed in Federal Election Commission records as contributors to Sessions' 1996 U.S. Senate race. "We have on record a $1,000 contribution from Mr. Young during the 1996 election cycle and no record of any other contribution from him," says a spokesman for Sessions.

Young also openly offered details about what he said were donations totaling between $12,000 and $15,000 to Pryor's campaign for state attorney general. Once again, Young had used the friends-and-colleagues maneuver. According to the FBI record, "Young advised that during Pryor's 1998 campaign, he contributed money through other individuals." Young named four people who "all wrote checks to Pryor's campaign and were reimbursed by Young for their contributions." At one point in the conversation, Young seemed particularly eager to tell all. "This was not just for the Governor's [Siegelman's] campaign," he told investigators. "It was also for the attorney general's campaign ... I gave you the example of five checks totaling $25,000. If I was there, I would write them out or just sign them, and they would fill in who it was to or whatever." According to Young, a top official on Pryor's campaign "would call and say, 'I need money for this, this or this,'" and Young would take care of the request. ("I do not have a recollection of the amounts that you describe as having been contributed by Lanny Young or his associates to my campaign," Pryor wrote in an e-mail to TIME.)

But it wasn't always as impersonal as handing over a stack of bills or checks. Among the illegal actions alleged in Siegelman's indictment was his acceptance from Young of thousands of dollars' worth of free T shirts and hundreds of specially embossed coffee mugs to give away as Christmas presents. The freebies were popular, said Young. "I had got them coffee cups and stuff before and shirts, and I had the same thing for Bill [Pryor]." Young estimated the value of the mugs at $13,000 to $15,000, and he even offered to share the extras with his inquisitors: "I've still got a case of his [Pryor's coffee cups] ... if y'all want to come get them." ("I don't think we want to touch them right now," an investigator replied.)

This evidence was heard by lawyers from U.S. Attorney Canary's office, representatives of Alabama's Republican attorney general and an attorney from the Justice Department's public-integrity unit in Washington. But in an unusual exercise of prosecutorial discretion, nearly all the payments and donations went uninvestigated. And when Siegelman's defense team, which had obtained Young's statements amid tens of thousands of documents provided in discovery, raised his accusations briefly in court, a judge quickly ruled them irrelevant.

Legal experts say prosecutors enjoy wide latitude in deciding whom to charge in criminal cases. But according to Laurie Levenson, a former assistant U.S. Attorney and a prominent expert in legal ethics at Loyola Law School in Los Angeles, there are limits. "Certainly prosecutors would face a professional obligation to check out or verify

the allegations in this case," she says. "Not doing so would represent a potential abuse of prosecutorial discretion." The key, she adds, is whether prosecutors chose not to pursue evidence of criminal activity by Republicans because of political bias or a conflict of interest. Sometimes prosecutors have a more benign motive; they may simply verify that allegations are untrue or be unclear on how to categorize the offense or the relevant statute of limitations. Certainly in Young's statements about Sessions and Pryor, he did not allege a quid pro quo for his money laundering of their campaigns. And whatever the involvement of their campaigns, Sessions and Pryor both assert they were completely unaware of his confessed chicanery. But the U.S. Attorney's office chose to prosecute Siegelman in no small measure on the basis of Young's word and chose not to investigate Sessions and Pryor — or their campaigns — on the basis of that same word.

Several people involved in the Siegelman case who spoke to TIME say prosecutors were so focused on going after Siegelman that they showed almost no interest in tracking down what Young said about apparently illegal contributions to Sessions, Pryor, other well-known figures in the Alabama G.O.P. and even a few of the state's Democrats. "It just didn't seem like that was ever going to happen," said an individual present during key parts of the investigation. "Sessions and Pryor were on the home team."

That description is not just a metaphor: several of the lawyers involved in the Siegelman investigation were from Pryor's office and had worked for Sessions as well when he held the post. In such circumstances, say experts on legal ethics, it is nearly always incumbent on investigators to inform a third party and recuse themselves from further questioning to avoid a conflict of interest. In this instance, it appears the investigators chose not to recuse themselves but to simply ignore the allegations. (Steve Feaga, an assistant U.S. Attorney in Canary's office, says, "I'm confident that we investigated every viable federal crime and prosecuted them.")

The fact that most of Young's claimed contributions apparently went unrecorded raises the possibility that he never made them, that he was merely boasting. But it would also mean that he had lied to federal agents, which is a felony, and Young was never charged with that crime. If he had lied, that would also have diminished Young's credibility as a key government witness against Siegelman. One of Young's lawyers tells TIME, "There was never the slightest suggestion by prosecutors that the information my client provided about contributions to Sessions and Pryor was in any way untrue." The judge in the Siegelman case also seemed to find Young credible: he stated at sentencing that he had increased the sentencing guidelines for the Governor on the basis of a prosecution memo that alleged "systematic and pervasive corruption" and cited a "criminal relationship with Lanny Young."

The controversy surrounding the case in Alabama is not that Siegelman went to prison and his Republican colleagues didn't. Without an investigation or even questions being asked, it's impossible to know whether any of them committed illegal acts. The issue is that some of the same allegations that led to Siegelman's indictment never merited so much as a follow-up when raised in connection with Republicans.

U.S. Attorney Canary has vigorously rejected the suggestion of any political influence on the case. She has pointed out that the investigation of Siegelman originated not with her but with her Democratic predecessor as U.S. Attorney and in the office of Alabama's then attorney general, Bill Pryor. Moreover, she notes that she was in

charge of the case for only eight months, long before indictments were handed down, and then publicly recused herself to avoid even the appearance of a conflict of interest.

Yet Canary was in charge when Young spoke about his payments to the Sessions and Pryor campaigns and to other Alabama Republicans. At the same time, her husband's consulting firm, Capitol Group LLC, was being paid close to $40,000 to advise Pryor. A source who held a senior post in Canary's office during the long-running investigation into Siegelman says it's almost inconceivable that Canary would not have been informed of Young's charges against prominent Republican officeholders and candidates. Canary denied that to TIME. The fact that those charges were never looked at will only heighten suspicions that the Siegelman prosecution was a case of selective justice and that in the Bush Administration, enforcing the law has been a partisan pursuit.

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August 6, 2007

EDITORIAL

Selective Prosecution

One part of the Justice Department mess that requires more scrutiny is the growing evidence that the department may have singled out people for criminal prosecution to help Republicans win elections. The House Judiciary Committee has begun investigating several cases that raise serious questions. The panel should determine what role politics played in all of them.

Putting political opponents in jail is the sort of thing that happens in third-world dictatorships. In the United States, prosecutions are supposed to be scrupulously nonpartisan. This principle appears to have broken down in Alberto Gonzales's Justice Department — where lawyers were improperly hired for nonpolitical jobs based on party membership, and United States attorneys were apparently fired for political reasons.

Individual Democrats may be paying a personal price. Don Siegelman, a former Alabama governor, was the state's most prominent Democrat and had a decent chance of retaking the governorship from the Republican incumbent. He was aggressively prosecuted by both the Birmingham and Montgomery United States attorney's offices. Birmingham prosecutors dropped their case after a judge harshly questioned it. When the Montgomery office prosecuted, a jury acquitted Mr. Siegelman of 25 counts, but convicted him of 7, which appear to be disturbingly weak.

The prosecution may have been a political hit. A Republican lawyer, Dana Jill Simpson, has said in a sworn statement that she heard Bill Canary, a Republican operative and a Karl Rove protégé, say that his "girls" — his wife, the United States attorney in Montgomery, and Alice Martin, the United States attorney in Birmingham — would "take care" of Mr. Siegelman. Mr. Canary also said, according to Ms. Simpson, that Mr. Rove was involved.

Georgia Thompson is a Wisconsin state employee wrongly put in jail on corruption charges by the Milwaukee United States attorney. Despite strong evidence that she was innocent, Steven Biskupic prosecuted Ms. Thompson for corruption and got a conviction. The news hit shortly before a bitterly fought governor's race, and opponents of James Doyle, the state's Democratic governor, used the conviction to attack Mr. Doyle as corrupt. An appeals court later freed Ms. Thompson, but only after she had spent months in jail.

The committee has requested documents from the Justice Department about those two cases. It should also look into the investigation of Senator Robert Menendez by Christopher Christie, the United States attorney for New Jersey. Based on the facts that have come out, Mr. Menendez appears to have done nothing wrong. But word of the investigation leaked out in the fall of 2006, damaging Mr. Menendez's reputation just when Republicans were trying to defeat him. It is unclear whose idea it was to conduct an investigation so close to the election of Mr. Menendez's lease of a building he had sold years earlier.

The Bush administration is throwing roadblocks in Congress's way. It missed a deadline for turning over documents, and it has refused to make some of the principal actors available to testify. The Judiciary Committee should not be deterred. If Americans are being put in jail for political reasons, Congress must put a stop to it.

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Opinion

The Wecht indictment

Given the Bushies' record, you have to wonder if it's all about politics

Sunday, July 22, 2007

The more we know about how the Bush administration conducts itself, the harder it is to believe the 84-count federal indictment against Cyril Wecht, which alleges that he mixed personal and county expenses, overbilled private clients and trading unclaimed cadavers for university office space.

Dr. Wecht, of course, is the former Allegheny County coroner, the famous consultant and commentator on celebrity murders, and for many years the most flamboyantly loquacious, brilliant, egotistical and thin-skinned public official in the region.

More to the point, he was, until his indictment, one of the county's most prominent Democratic officeholders.

An ambitious and enthusiastic Bush partisan like U.S. Attorney Mary Beth Buchanan might well consider Dr. Wecht a plum target, good for many brownie points at the White House. Indeed, that is exactly the sort of thing this Justice Department requires from prosecutors -- just ask the nine who were summarily dismissed for failing to pursue Democratic politicians and "voter fraud" with sufficient zeal.

This White House has been seven times more likely to go after local Democratic officials than Republicans, according to a study by Donald Shields and John Cragan, two professors emeriti from the University of Minnesota. No shock, then, that Ms. Buchanan hasn't indicted a single GOP officeholder since taking the reins in 2001 while indicting or investigating at least five prominent Democrats.

Contrast her record with that of former Attorney General Dick Thornburgh. When he was U.S. attorney here, partisan considerations didn't stop him from prosecuting a fellow Republican, District Attorney Robert Duggan. It seems fitting that Mr. Thornburgh is now a member of Dr. Wecht's defense team.

This week, the U.S. House Judiciary Committee asked to see documents related to the pursuit of Dr. Wecht and two other high-profile Democratic officials. In a letter to Attorney General Alberto Gonzales -- a man who professes less knowledge of his department's workings than one would expect from the cleaning staff -- Chairman John Conyers said that finding out the truth about political profiling at the Justice Department was necessary to restore public faith in our legal system.

None of this means Dr. Wecht is necessarily innocent of all the charges (he did beat similar theft-of-service allegations in 1981, giving the current situation a deja vu quality.) But Bush-league politics certainly helps explain the overreaching nature of the indictment, which

reads in some places like a laundry list of petty offenses on par with taking office supplies home for personal use. Stealing pencils is bad and should be punished, but does it really require the full force of the federal government?

It's true that prosecutors often throw multiple charges against the wall, not expecting them all to stick. Still, Ms. Buchanan has tipped her hand in this case several times. She labeled Dr. Wecht a "flight risk" who might flee to Israel (if he were Roman Catholic, would she have feared his escape to Italy?). She also reportedly wanted to march him through a public "perp walk," and she pushed for a trial to take place one month before the 2006 election.

Suspecting her motives might seem paranoid in a vacuum, but this is just one small piece of a big picture in which only the purest Bush loyalists seem able to hang onto their jobs. Anyone who doesn't carry water for the president's ideological agenda is marginalized, vilified or shown the door; politics trumps fact, science, fairness and the public good every time.

This has been driven home repeatedly in the departments of state, defense, energy and justice, the CIA, EPA, FDA and more. Recent damning testimony from Dr. Richard H. Carmona, President Bush's surgeon general from 2000 to 2004, only emphasized the point.

The doctor told Congress he was ordered to keep quiet on stem cells, emergency contraception and sex education. The Bushies tried to drag down his report on the dangers of second-hand smoke. They didn't even want him attending the Special Olympics because of the games' association with the Kennedys.

But the most revealing testimony came straight out of the playbook for fascist dictators: Dr. Carmona was ordered to insert President Bush's name three times on every page of every speech he delivered.

It sounds like a scene from Woody Allen's "Bananas," but less funny. Perhaps Karl Rove also considered making everyone wear their underwear on the outside.

I confess a professional soft spot for Dr. Wecht. His rulings, feuds and polysyllabic speechifying were always good news copy, and his bombastic letters in response to perceived slights were legendary. You weren't a real journalist in this town until you got one of his flamers in the mail -- or a complimentary note, for that matter -- and without him in the medical examiner's office the local scene seems kind of pale.

Still, I would not defend him on that basis, any more than I would convict him for once likening Post-Gazette reporters to dung beetles. But under this president, no nefarious prosecutorial motives can be discounted and no denials of same can be trusted.

The jury has yet to convene on Dr. Wecht, but the verdict on the Bush administration is loud and clear: 100 percent political.

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Democrats See Politics in a Governor's Jailing

By ADAM NOSSITER

BIRMINGHAM, Ala. — House leaders are beginning an investigation this week of the prosecution of Don Siegelman, the former Democratic governor of Alabama who was imprisoned in June on federal corruption charges. The case could become the centerpiece of a Democratic effort to show that the Justice Department engaged in political prosecutions.

Republicans strongly deny the suggestion, and as Mr. Siegelman enters the fourth month of his 88-month sentence, the case is becoming a bitter flash point between Democratic officials and the Bush administration.

Jill Simpson, an Alabama lawyer who signed an affidavit saying she overheard a Republican political operative connect the prosecution of Mr. Siegelman to Karl Rove, will be questioned under oath this week by investigators for the House Judiciary Committee. The chairman of that committee, Representative John Conyers Jr., Democrat of Michigan, has asked the Justice Department to turn over its documents in the case.

The department has refused his request, saying in a letter last week to the committee that "we want to avoid any perception that the conduct of our criminal investigations and prosecutions is subject to political influence."

On Monday, Mr. Conyers called the department's position "unacceptable," saying of its reasoning, "This concern should lead to precisely the opposite result."

The case is considered unusual by many legal experts because actions like those Mr. Siegelman was accused of — exchanging a seat on the state hospital licensing board for a contribution to an education lottery campaign he was pushing — are hardly uncommon in state capitals around the country.

"It's unusual to see a bribery prosecution where the payment wasn't to the defendant," said David A. Sklansky, a former federal prosecutor who teaches at the law school at the University of California, Berkeley. "It seems to me the conduct in this case was similar to a lot of what we take as normal for politics."

Still, some legal experts say that federal prosecutors have wide latitude in interpreting the broad bribery statutes and that Mr. Siegelman's actions, as outlined by the government, could have

crossed the line. Stephen Gillers, a professor at New York University School of Law, said the defense claim that the prosecution had not proved corrupt intent does not undermine the conviction.

"I think the government reply brief demolishes Siegelman's legal argument on the current case law," Mr. Gillers said.

Nonetheless, Democrats are planning to conduct hearings on the case as part of a wide-ranging look at what they say may be other political prosecutions elsewhere.

Representative Artur G. Davis, like Mr. Siegelman an Alabama Democrat, said he wanted Mr. Rove, the recently departed White House deputy chief of staff, to testify about Mr. Siegelman. Mr. Davis called Mr. Rove "the most significant factual witness in this matter."

Mr. Davis, in his third term in Congress and a former federal prosecutor himself, said it was "certainly plausible" Mr. Rove could have had a hand in the Siegelman prosecution. He cited Mr. Rove's involvement in the state's politics in the 1990s and Alabama's wholesale transition, bucked by Mr. Siegelman, to Republican dominance.

Forty-four former state attorneys general, including some Republicans, from New York, California, Massachusetts and elsewhere have signed a petition urging Congress to look into Mr. Siegelman's conviction, which his lawyers are appealing.

"There is reason to believe that the case brought against Governor Siegelman may have had sufficient irregularities as to call into question the basic fairness that is the linchpin of our system of justice," the attorneys general wrote.

In Alabama, a small war of editorial boards has erupted since Mr. Siegelman was sentenced to seven years and four months in prison in late June. Newspapers in the state's smaller cities have repeatedly raised questions about the former governor's treatment.

Alabama Democrats are seething over a judge's decision to have Mr. Siegelman immediately shackled and jailed on the day of sentencing, with no chance for him to seek bond or put his affairs in order. Republicans say the ex-governor is nothing more than a crook who ran a "pay for play" administration.

Mike Hubbard, chairman of the state's Republican Party, called Ms. Simpson's allegations "a bunch of hogwash" and said "the state of Alabama was for sale when Don Siegelman was governor."

Democrats are equally passionate. "My sense is, there is a great unease with what has gone on here," said Jack Miller, former chairman of the Alabama Democratic Party. "It's kind of, if it could happen to him, it could happen to anybody."

Mr. Siegelman, meanwhile, is in the federal prison in Oakdale, La. In a recent note to The

Associated Press, he said his case would will eventually be seen as the "Watergate of 2008."

The government prosecutors who sent Mr. Siegelman to prison have angrily rebutted any suggestion of politics in several detailed statements, one of them criticizing national press coverage of the case.

"My sole motivation for pushing the prosecution was a firmly held belief, supported by overwhelming evidence and the law, that former Governor Siegelman had broken the law and traded his public office for personal and political favors," Louis V. Franklin Sr., the acting United States attorney in Montgomery, said in one statement. Mr. Franklin took over the case after demands that the sitting United States attorney, Leura G. Canary, recuse herself because her husband, William, is active in the Republican Party and has ties to Mr. Rove.

Yet questions about the Siegelman case persist, including about whether Mr. Franklin played the decisive role he says he did, and not just among the former governor's supporters.

For one thing, the prosecution of a high official like a governor is nearly always undertaken under the watchful eye of Justice Department officials in Washington, former government lawyers say.

One of Mr. Siegelman's former lawyers, G. Douglas Jones, former United States attorney in Birmingham, says that at a crucial moment in 2004, when the Siegelman investigation seemed to be flagging, he was told by government prosecutors in Montgomery that the "folks in Washington said, 'Take another look at everything.' "

Referring to a unit of the Justice Department, Mr. Jones said, "There is no question but that the Public Integrity Section was intimately involved."

Democrats have tried to tie the case to the continuing dispute over the firing of several federal prosecutors for what they say were political reasons.

After serving as secretary of state, attorney general and lieutenant governor, Mr. Siegelman was elected governor in 1998. He was narrowly defeated in 2002 and for most of his term his administration was under investigation, his lawyers say. "These guys doing the investigating were hell-bent on finding something Siegelman did wrong," Mr. Jones said.

In June 2006 Mr. Siegelman was convicted by a federal jury in Montgomery of accepting $500,000 from Richard M. Scrushy, then the chief executive of the HealthSouth Corporation, in return for an appointment to the state hospital licensing board.

The money was to be used to retire a debt incurred by Mr. Siegelman's campaign for a state lottery to fund education. Government prosecutors say Mr. Siegelman, as a co-guarantor, was personally liable for the debt; his lawyers say that Mr. Siegelman's signature was a formality and that he would never have been expected to personally pay back the loan. Mr. Scrushy had served on the same

hospital board under three previous governors.

The White House has brushed off suggestions that Mr. Rove may have been involved.

An associate of Mr. Rove's in the state, Matthew C. McDonald, a Mobile lawyer, said Mr. Rove had maintained at least a passing interest in Alabama affairs. The interest dated back to his pivotal role as a political consultant here in the 1990s, when he helped shift the state's supreme court to the Republicans. Mr. Rove opened an office in Montgomery, and would fly in and out regularly.

Representative Davis pointed out that the case against the governor rested almost wholly on the testimony of two cooperating witnesses, most of whose allegations were rejected by the jury.

The most important of the witnesses, a former aide to Mr. Siegelman named Nick Bailey, testified about the governor's appointing Mr. Scrushy to the hospital board in exchange for the contribution.

But Mr. Bailey also admitted taking tens of thousands of dollars in bribes without the governor's knowledge, said he had not been in the room when Mr. Siegelman met with Mr. Scrushy, and could offer only his recollection of a brief exchange with the governor on the matter.

In legal papers, however, the government dismissed the idea that its case was weak, saying the "evidence was more than sufficient to convict defendant."

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EDITORIAL OBSERVER

A Woman Wrongly Convicted and a U.S. Attorney Who Kept His Job

By ADAM COHEN

Madison, Wis.

Opponents of Gov. Jim Doyle of Wisconsin spent $4 million on ads last year trying to link the Democratic incumbent to a state employee who was sent to jail on corruption charges. The effort failed, and Mr. Doyle was re-elected — and now the state employee has been found to have been wrongly convicted. The entire affair is raising serious questions about why a United States attorney put an innocent woman in jail.

The conviction of Georgia Thompson has become part of the furor over the firing of eight United States attorneys in what seems like a political purge. While the main focus of that scandal is on why the attorneys were fired, the Thompson case raises questions about why other prosecutors kept their jobs.

The United States Court of Appeals for the Seventh Circuit, which heard Ms. Thompson's case this month, did not discuss whether her prosecution was political — but it did make clear that it was wrong. And in an extraordinary move, it ordered her released immediately, without waiting to write a decision. "Your evidence is beyond thin," Judge Diane Wood told the prosecutor. "I'm not sure what your actual theory in this case is."

Members of Congress should ask whether it was by coincidence or design that Steven Biskupic, the United States attorney in Milwaukee, turned a flimsy case into a campaign issue that nearly helped Republicans win a pivotal governor's race.

There was good reason for the appeals court to be shocked. Ms. Thompson, a 56-year-old single woman, seems to have lost her home and spent four months in prison simply for doing her job. Ms. Thompson, who spent years in the travel industry before becoming a state employee, was responsible for putting the state's travel account up for competitive bid. Mr. Biskupic claimed that she awarded the contract to an agency called Adelman Travel because its C.E.O. contributed to Mr. Doyle's campaign.

To charge her, Mr. Biskupic had to look past a mountain of evidence of innocence. Ms. Thompson was not a Doyle partisan. She was a civil servant, hired by a Republican governor, with no identifiable interest in politics. She was only one member of a seven-person committee that evaluated the bidders. She was not even aware of the Adelman campaign contributions. She also had a good explanation for her choice: of the 10 travel agencies that competed, Adelman submitted the lowest-cost bid.

While Ms. Thompson did her job conscientiously, that is less clear of Mr. Biskupic. The decision to award the contract — the supposed crime — occurred in Madison, in the jurisdiction of Wisconsin's other United

States attorney. But for reasons that are hard to understand, the Milwaukee-based Mr. Biskupic swept in and took the case.

While he was investigating, in the fall of 2005, Mr. Biskupic informed the media. Justice Department guidelines say federal prosecutors can publicly discuss investigations before an indictment only under extraordinary circumstances. This case hardly met that test.

The prosecution proceeded on a schedule that worked out perfectly for the Republican candidate for governor. Mr. Biskupic announced Ms. Thompson's indictment in January 2006. She went to trial that summer, and was sentenced in late September, weeks before the election. Mr. Biskupic insisted in July, as he vowed to continue the investigation, that "the review is not going to be tied to the political calendar."

But the Thompson case was "the No. 1 issue" in the governor's race, says the Wisconsin Democratic Party chairman, Joe Wineke. In a barrage of commercials, Mr. Doyle's opponents created an organizational chart that linked Ms. Thompson — misleadingly called a "Doyle aide" — to the governor. Ms. Thompson appeared in an unflattering picture, stamped "guilty," and in another ad, her name was put on a graphic of jail-cell doors slamming shut.

Most of the eight dismissed prosecutors came from swing states, and Democrats suspect they may have been purged to make room for prosecutors who would help Republicans win close elections. If so, it might also mean that United States attorneys in all swing states were under unusual pressure.

Wisconsin may be the closest swing state of all. President Bush lost it in 2004 by about 12,000 votes, and in 2000, by about half that. According to some Wisconsin politicians, Karl Rove said that their state was his highest priority among governor's races in 2006, because he believed a Republican governor could help the party win Wisconsin in the 2008 presidential election.

Mr. Biskupic insists that he prosecuted Ms. Thompson only because he believed a crime was committed, and that he did not discuss the political implications of the case or the timing with anyone in the Justice Department or the White House. Congress has asked the Justice Department for all e-mail messages about the case to help resolve the matter.

But even if there were no discussions, Mr. Biskupic may have known that his bosses in Washington expected him to use his position to help Republicans win elections, and then did what they wanted.

That would be ironic indeed. One of the biggest weaknesses in the case against Ms. Thompson was that to commit the crime she was charged with she had to have tried to gain personally from the contract, and there's no credible evidence that she did. So Mr. Biskupic made the creative argument that she gained by obtaining "political advantage for her superiors" and that in pleasing them she "enhanced job security for herself." Those motivations, of course, may well describe why Mr. Biskupic prosecuted Ms. Thompson.

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EDITORIAL OBSERVER

The United States Attorneys Scandal Comes to Mississippi

By ADAM COHEN

Paul Minor is the son of Bill Minor, a legendary Mississippi journalist and chronicler of the civil rights movement. He is also a wealthy trial lawyer and a mainstay of Mississippi's embattled Democratic Party. Mr. Minor has contributed $500,000 to Democrats over the years, including more than $100,000 to John Edwards, a fellow trial lawyer. He fought hard to stop the Mississippi Supreme Court from being taken over by pro-business Republicans.

Mr. Minor's political activity may have cost him dearly. He is serving an 11-year sentence, convicted of a crime that does not look much like a crime at all. The case is one of several new ones coming to light that suggest that the department's use of criminal prosecutions to help Republicans win elections may go farther than anyone realizes.

The House Judiciary Committee is scheduled to hold hearings shortly on whether the Justice Department engaged in selective prosecution in two other cases: when it went after Alabama Gov. Don Siegelman, who is serving more than seven years in prison on dubious charges, and Georgia Thompson, a Wisconsin civil servant who was freed after serving four months on baseless corruption charges.

Mr. Minor, whose firm made more than $70 million in fees in his state's tobacco settlement, suspects it was his role in the 2000 Mississippi Supreme Court elections that put a target on his back. The United States Chamber of Commerce spent heavily to secure a Republican, pro-business majority, while Mr. Minor contributed heavily to the other side.

The chamber was especially eager to unseat Justice Oliver Diaz Jr., a former trial lawyer. He was re-elected after a hard-fought, high-spending campaign. Then the prosecutions came from the politicized Bush Justice Department.

Mississippi's loose campaign finance laws allow lawyers and companies to contribute heavily to the judges they appear before. That is terrible for justice, since the courts are teeming with perfectly legal conflicts of interest. It also creates an ideal climate for partisan selective prosecution. Since everyone is making contributions and nurturing friendships that look questionable, a prosecutor can haul any lawyer and judge he doesn't like before a grand jury and charge corruption.

The Justice Department indicted Justice Diaz and Mr. Minor on an array of unconvincing bribery and fraud charges. Justice Diaz was acquitted of all of them. The federal prosecutors then brought tax evasion charges against him. Justice Diaz was acquitted again and still sits on the Mississippi Supreme Court.

Mr. Minor was not as lucky. He beat many of the charges in the first trial, but the jury failed to reach a

verdict on others. Federal prosecutors went after him again, and this time Mr. Minor was convicted on vague allegations of trying to get "an unfair advantage" from judges — the very thing Mississippi's lax campaign finance laws are set up to allow.

The case fits a familiar pattern. The corruption Mr. Minor was charged with was disturbingly vague, as it was with Ms. Thompson, whose only "crime" was awarding a contract to the lowest bidder, and Mr. Siegelman, who was convicted for fairly routine political behavior.

Mr. Minor's prosecution, like the others in this scandal, gave a big boost to the Republican Party. The case intimidated trial lawyers into stopping their political activity. "The disappearance of the trial-lawyer money all but wiped out the Democratic Party in Mississippi," Stephanie Mencimer reports in her book, "Blocking the Courthouse Door."

There also appears to have been pro-Republican favoritism. Mr. Minor's lawyers say prosecutors were not interested in going after similar activity by trial lawyers who contributed to Republicans. Time magazine recently reported that in Alabama, one of the main witnesses against Mr. Siegelman also told prosecutors of possible corruption involving Jeff Sessions, a Republican senator from Alabama, but they did not pursue it.

And there is the matter of timing. The prosecution of Mr. Minor and Justice Diaz came just as Gov. Ronnie Musgrove, a Democrat, was running for re-election against Republican Haley Barbour. The Republicans spent heavily to tie Mr. Musgrove to Mr. Minor, and Mr. Musgrove was defeated.

In Wisconsin, Ms. Thompson's trial coincided perfectly with Democratic Gov. Jim Doyle's re-election campaign, and Republicans tried to link Doyle to Thompson. Mr. Siegelman's prosecution looks like it was timed to prevent him from becoming governor again. It may be that all three of these cases were simply attempts to use the Justice Department to get Republican governors elected.

Ms. Thompson was fortunate to get a good federal appeals court panel, which ordered her released. Mr. Minor and Mr. Siegelman may not be so lucky. Former Attorney General Alberto Gonzales and many other key players in the United States attorneys scandal are gone, but Congress has a lot more work to do in uncovering the damage they have done to the justice system.

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