



**United States of House of Representatives  
Committee on the Judiciary  
Majority Staff**

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**Allegations of Selective Prosecution in  
Our Federal Criminal Justice System**

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**Prepared for  
Chairman John Conyers, Jr.**

**April 17, 2008**

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## Executive Summary

Since July 2007, the Committee on the Judiciary and its staff have been investigating allegations that political considerations may have improperly influenced federal criminal prosecutions in a number of cases around the country. For the reasons described below, further action along the following lines is recommended:

- Justice Department internal oversight offices should conduct a thorough investigation and report on these troubling allegations of selective, politically-motivated federal prosecutions.
- The Committee's investigation should continue and further efforts should be made to obtain relevant documents about the cases described in this report.
- As part of that investigation, efforts should be made to obtain testimony from Karl Rove.

This report from Committee majority staff describes the progress of the investigation on allegations of selective and politically-motivated prosecution and summarizes troubling evidence regarding several federal criminal cases, in particular the prosecution of former Governor of Alabama Don Siegelman. Because the Department of Justice has largely refused to cooperate with the Committee's investigation, key facts remain unknown and reliable final judgments cannot be made. However, given the troublesome facts identified to date, it is clear at a minimum that current and former Department leadership has been derelict in failing to review these matters and reassure the American people that federal law enforcement is impartial and fair. In particular:

- 44 former state Attorneys General of both parties, former federal prosecutors, and Republican former Attorney General Richard Thornburgh have all expressed concern about what Attorney General Thornburgh has referred to as "apparent political prosecution[s]." <sup>1</sup> Attorney General Thornburgh testified to the Committee that as a result of these problems, Americans "may no longer" 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." <sup>2</sup>

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<sup>1</sup> Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Hearing at 13; Letter from 44 State Attorneys General to Chairman John Conyers, Jr. and Chairman Patrick Leahy, July 13, 2007.

<sup>2</sup> Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Hearing at 12.

- There is extensive evidence that the prosecution of former Governor Don Siegelman was directed or promoted by Washington officials, likely including former White House Deputy Chief of Staff and Advisor to the President Karl Rove, and that political considerations influenced the decision to bring charges. Several witnesses have corroborated testimony before two Judiciary Subcommittees that the investigation against Governor Siegelman was “coming to a close” without charges until Washington officials directed local prosecutors to go back over the matter from top to bottom, and that decisions regarding the Siegelman case were being made at the very highest levels of the Administration.<sup>3</sup> That testimony in turn corroborates the sworn statements of a Republican attorney that the son of the Republican Governor of Alabama told her that Karl Rove had pressed the Department to bring charges.<sup>4</sup> The issue of the involvement of Mr. Rove or others at the White House in the Siegelman case remains an important open question.
  
- There is also significant evidence of selective prosecution in the Siegelman case. Department investigators pursued leads relating to Governor Siegelman but appear to have ignored similar leads involving similar conduct by Republican politicians.<sup>5</sup>
  
- A number of other cases raise troubling concerns about politicization of federal prosecutions under the Bush Administration. For example:
  - In a politically sensitive Wisconsin case, a federal appeals court was so disturbed by the lack of evidence and what it described as “preposterous” theories of prosecution that it took the extraordinary step of ordering the defendant released from prison on the day of oral argument<sup>6</sup>, and one Department official commented “How in the heck did this case ever get brought?”<sup>7</sup>

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<sup>3</sup> Jones, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Hearing at 39; section III Ai. infra.

<sup>4</sup> Interview of Dana Jill Simpson, Sept. 14, 2007, at 25-27.

<sup>5</sup> See Zagorin, *Selective Justice in Alabama?*, Time Magazine, Oct. 4, 2007.

<sup>6</sup> Foley, *Federal Appeals Court Orders Thompson Released From Prison*, Associated Press, Apr. 5, 2007; United States v. Thompson, 484 F.3d 877 (7<sup>th</sup> Cir. 2007).

<sup>7</sup> Email from Craig Donsanto, Director, Election Crimes Branch U.S. Dept. of Justice, to Raymond Husler, Deputy Chief for Policy and Administration, Public Integrity Section, May 3, 2007.

- The prosecution of Allegheny County Coroner Cyril Wecht by politically-connected U.S. Attorney Mary Beth Buchanan continues to raise concern about selective prosecution. Former Attorney General Richard Thornburgh powerfully described for two Judiciary Subcommittees his view that both the charges and the conduct of the prosecution reveal it, like other Pennsylvania cases he described, to be an “apparent political prosecution” and one that was “undertaken for political reasons as opposed to being done to serve the interests of justice.”<sup>8</sup> After a two-month trial, a Pennsylvania jury recently failed to convict Dr. Wecht on any charges and, after the judge declared a mistrial, juror interviews revealed that “the majority of the jury thought he was innocent.”<sup>9</sup> The Pittsburgh Post-Gazette also stated its concerns about the matter, editorializing that the case “added up to a big zero” and that it would be a “travesty” for the prosecution to continue, concerns echoed by a group of local Republicans and Democrats who recently wrote the Attorney General and U.S. Attorney Buchanan urging that plans to retry Dr. Wecht be reconsidered.<sup>10</sup> The jury foreman observed that “as the case went on, my thoughts were that this was being politically driven.”<sup>11</sup> And news that FBI agents were contacting members of the Wecht jury only further raised alarm.<sup>12</sup>
  
- Charges against a group of judges and a practicing attorney in Mississippi arising out of what appear to be relatively common campaign fundraising practices raise similar issues of selective prosecution. A Republican-connected attorney who appears to have engaged in similar conduct was not indicted by this U.S. Attorney, further raising concerns about the possibility of selective prosecution.<sup>13</sup>

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<sup>8</sup> Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 7, 10.

<sup>9</sup> Cato, *Majority Thought Wecht was Innocent, Juror Says*, Pittsburgh Tribune Review, April 9, 2008.

<sup>10</sup> Letter from Citizens of the Western District of Pennsylvania to Attorney General Michael Mukasey and Mary Beth Buchanan, U.S. Attorney for the Western District of Pennsylvania, April 16, 2008.

<sup>11</sup> Silver, *Some Jurors Skeptical of Case Against Wecht*, Pittsburgh Post Gazette, Apr. 10, 2008.

<sup>12</sup> Prine and Cato, *FBI's Calls Upset Jurors in Wecht Trial*, Fri. Apr. 11, 2008.

<sup>13</sup> Cohen, *The United States Attorneys Scandal Comes to Mississippi*, New York Times, Oct. 11, 2007. See also Letter from Judge John Whitfield to Chairman John Conyers, Jr., and Chairman Patrick Leahy, July 23, 2007; Letter from Paul Minor to Chairman John Conyers, Jr., Oct. 22, 2007; Letter from Justice Oliver Diaz to Chairman Conyers and Ranking Member Smith on Oct. 22, 2007.

- A 2007 academic study demonstrates that some 80% of federal public corruption cases during the Bush Administration have involved Democratic office holders while only 14% have involved Republicans. The study's author concluded that there is "less than one chance in 10,000" that the over-representation of Democrats occurred by chance.<sup>14</sup>
- The Department has largely refused to cooperate with the Committee's investigation, declining to provide any non-public information or to make its personnel available regarding all but one of the cases under review. The Attorney General has not responded to recent letters on this subject from Chairman Conyers and Representative Davis, and does not appear to have taken steps to review these issues as he had said he would during his confirmation hearings.<sup>15</sup> The need for the Department to cooperate with Committee oversight, and for an independent Executive Branch review of the allegations of selective prosecution, remain paramount in order to restore the public's confidence in our federal justice system.

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<sup>14</sup> Shields, Oct. 23, 2007, Subcomms. On Crime, Terrorism, and Homeland Security and Commercial and Admin. Law, Hearing at 15-16.

<sup>15</sup> See Letter from Chairman John Conyers, Jr. to Attorney General Michael Mukasey, Jan. 31, 2008; Mukasey, Feb. 7, 2008, H. Comm. on the Judiciary, Hearing at 94; Letter from Rep. Artur Davis to Attorney General Michael Mukasey, Feb. 14, 2008.

This report describes the progress of an investigation by the Judiciary Committee and its majority staff into allegations that criminal prosecutions have been brought by Bush Administration prosecutors for political reasons. If true, such charges would describe a severe abuse of executive power. Given the gravity of these charges, the investigation has been cautious and deliberate, and final conclusions have not yet been reached. The facts learned to date, however, are troubling.

## I. Introduction

The Judiciary Committee's ongoing investigation into the U.S. Attorney firings has revealed an extraordinary degree of politicization within the Department of Justice. The Committee has uncovered extensive evidence that the firings themselves were animated by partisan political considerations.<sup>16</sup> Traditional boundaries between political officials and White House personnel, on the one hand, and prosecutors at the Department of Justice, on the other, have been eroded so that, under the flawed Bush Administration policy in place until late 2007, hundreds of officials at the White House were authorized to speak with dozens of individuals at the Department about specific criminal cases.<sup>17</sup> Overall, the Department's longstanding tradition and culture of prosecutorial independence has come under enormous strain, reflected in then-Attorney General Alberto Gonzales announcing at a U.S. Attorneys conference that "I work for the White House, you work for the White House."<sup>18</sup> Then-U.S. Attorney John McKay of Washington State (who ultimately was forced from his post) and other attendees found these remarks inconsistent with traditional notions of prosecutorial independence.

As the Committee's investigation has revealed that some U.S. Attorneys who apparently were not considered sufficiently loyal were forced to resign, concerns have also been raised that political pressure may have been brought to bear on some U.S. Attorneys who were permitted to keep their jobs – including the so-called "loyal Bushies," as they were described by Kyle Sampson, Chief of Staff to former Attorney General Gonzales.<sup>19</sup> Just as some prosecutors appear

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<sup>16</sup> See Additional Views of Chairman Conyers and Subcommittee Chair Sánchez In Support of the Committee's 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, November 5, 2007, available at <http://judiciary.house.gov/Media/PDFS/MajorityView071105.pdf>.

<sup>17</sup> See Memorandum from Attorney General Alberto Gonzales to Heads of Dept. Components and United States Attorneys, May 12, 2006; Eggen, *Mukasey Limits Agency's Contacts With White House*, Dec. 20, 2007.

<sup>18</sup> Bowermaster, *Charges May Result From Firings*, Seattle Times, May 9, 2007.

<sup>19</sup> E-mail from Kyle Sampson to the Deputy White House Counsel David Leitch, responding to a "Question from Karl Rove," Jan. 9, 2005; see also Krugman, *Department of Injustice*, New York Times, March 7, 2007 ("The bigger scandal, however, almost surely involves prosecutors still in office. The Gonzales Eight were

to have been fired for displeasing political operatives in their home states or for bringing cases that were harmful to partisan interests, were other prosecutors retained or promoted for using their power to please political leaders or to promote partisan interests? Even in the case of truly professional, independent prosecutors, was improper political pressure brought to bear on their exercise of prosecutorial power?

Such concerns were reinforced and heightened by an academic study published in February 2007 by Professors Donald Shields and John Cragan that found federal prosecutors during the Bush Administration have investigated Democratic officeholders far more frequently than their Republican counterparts.<sup>20</sup> The study identified 375 investigations and/or indictments of candidates and elected officials brought by U.S. Attorneys between January 2001 and December 2006.<sup>21</sup> The study's authors found that of the 375 cases they identified, 10 involved independents, 67 involved Republicans, and 298 involved Democrats.<sup>22</sup> 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 investigation from the Department of Justice.<sup>23</sup>

The authors expanded and updated this study during the course of 2007, and further results were presented to the Subcommittee on Commercial and Administrative Law and the Subcommittee on Crime, Terrorism, and Homeland Security (together, the "Subcommittees") at a joint hearing on allegations of selective prosecution held on October 23, 2007. The updated findings – based on a sample of 820 reported cases and investigations – determined that, during the Bush Administration, 80% of federal public corruption investigations have involved Democratic officeholders and only 14% have involved Republican officeholders.<sup>24</sup> Based on these data, the study author testified that the Administration's investigations of Democrats are

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fired because they wouldn't go along with the Bush administration's politicization of justice. But statistical evidence suggests that many other prosecutors decided to protect their jobs or further their careers by doing what the administration wanted them to do: harass Democrats while turning a blind eye to Republican malfeasance.").

<sup>20</sup> Shields & 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](http://www.epluribusmedia.org/columns/2007/20070212_political_profiling.html).

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Shields, Oct. 23, 2007, *Subcomms. On Crime, Terrorism, and Homeland Security and Commercial and Admin. Law, Hearing at 16.*

“highly disproportionate,” and that there was “less than one chance in 10,000” that the over-representation of Democrats was by chance, concluding that selective prosecution of Democrats must have occurred.<sup>25</sup>

The Committee is not alone in its concern regarding these issues. Questions regarding selective prosecution have been the subject of extensive press inquiry over the past year and, in summer 2007, the Committee received a bipartisan petition signed by 44 former state Attorneys General calling for action.<sup>26</sup> At the Subcommittees’ joint hearing, former Reagan and George H. W. Bush Attorney General Richard Thornburgh stated his concern about “apparent political prosecution” and warned that citizens “may no longer” 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.”<sup>27</sup>

The perception that U.S. Attorneys’ offices have improperly exercised their prosecutorial powers in a partisan manner has had repercussions in the courtroom. The *Los Angeles Times* has reported that defense attorneys have cited allegations of selective prosecution as evidence that federal prosecutors are bringing criminal charges based upon improper political motives. Those defense attorneys have alleged that prosecutors have considered a target’s political affiliations when deciding whether or not to issue indictments.<sup>28</sup> Whether true or not, such allegations show the extent to which the Department’s credibility has been undermined in recent years and demonstrate the importance of the Committee’s work in bringing these issues to light.

## II. Summary of Investigation

Against this background, Committee majority staff (“Staff”) have continued to investigate allegations of selective prosecution that have surfaced around the country. In the early stages of its work, Staff focused particularly on three cases where concerns about politically-motivated prosecutions have been especially intense: the Georgia Thompson case in Milwaukee,

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<sup>25</sup> *Id.*

<sup>26</sup> *See* Editorial, *Time to Vote Contempt*, New York Times, Feb. 14, 2008, (“There are people in jail today, including a former governor of Alabama, who have raised credible charges that they were put there for political reasons.”); Horton, *A Primer In Political Prosecution*, Oct. 24, 2007; Kalson, *The Wecht Indictment*, July 22, 2007; Cohen, *The United States Attorneys Scandal Comes to Mississippi*, Oct. 11, 2007; Letter from 44 former state Attorneys General, to Chairman John Conyers, Jr., H. Comm. on the Judiciary, and Chairman Patrick Leahy, S. Comm. on the Judiciary, July 13, 2007. That Attorneys General letter specifically addressed the prosecution of former Alabama Governor Don Siegelman, described below.

<sup>27</sup> Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Hearing at 12.

<sup>28</sup> *See* Schmitt, *Attorney Firings Echo in Courts*, Los Angeles Times, June 18, 2007.

Wisconsin, the prosecution of the Democratic former Governor of Alabama Don Siegelman, and the criminal prosecution of Allegheny County coroner Cyril Wecht in Pittsburgh, Pennsylvania. Staff has also examined several cases brought against a group of judges and a practicing attorney in Jackson, Mississippi. Each of these matters presents a questionable exercise of prosecutorial discretion and they often involve charges that appear to elevate routine political fundraising or similarly mundane conduct into aggressive federal criminal charges. As stated above, other cases of alleged selective prosecution have also been reported to the Committee.

On July 17, 2007, Chairman Conyers, Commercial and Administrative Law Subcommittee Chair Sánchez, and Committee Members Davis and Baldwin sent a letter to then-Attorney General Gonzales seeking documents regarding the Department's handling of the Siegelman, Wecht, and Thompson cases, including materials that would explain the Department's charging analysis and decisionmaking process.<sup>29</sup> Two months later, on September 4, 2007, the Department responded by refusing to produce any "predecisional" or "deliberative" documents regarding any of these cases, relying on a statement of the Department's claimed "longstanding" position made in a 2002 letter authored by Alberto Gonzales when he served as White House Counsel.<sup>30</sup> The Department did provide a small number of documents (less than 30 pages) regarding the Thompson case, which it considers a "closed" matter about which information may be somewhat more freely shared, and offered to make United States Attorney Biskupic available for an untranscribed briefing on that case.<sup>31</sup> The Department refused to provide any non-public information or documents regarding the Siegelman and Wecht cases, asserting that it could not provide such information to the Committee on "open" matters.<sup>32</sup>

Chairman Conyers, Chair Sánchez, and Representatives Davis and Baldwin responded by further clarifying the scope of the Committee's information request and explaining that the Department's refusal to provide any information on "open" cases or any "deliberative" materials was inconsistent with past practice and Department precedent.<sup>33</sup> In fact, Congress repeatedly has obtained prosecution memoranda and other deliberative materials of the Department regarding

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<sup>29</sup> Letter from Chairman John Conyers, Jr. and other members of the H. Comm. on the Judiciary to Attorney General Alberto Gonzales, July 17, 2007.

<sup>30</sup> Letter from Principal Deputy Assistant Attorney General Brian A. Benczkowski to Chairman John Conyers, Jr., Sept. 4, 2007.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Letter from Chairman John Conyers, Jr. and other members of the H. Comm. on the Judiciary to Attorney General Alberto Gonzales, Sept. 10, 2007.

both open and closed criminal matters during past congressional investigations.<sup>34</sup> The Administration even made available to Congress the very prosecution memoranda that were at issue in the 2002 letter authored by Mr. Gonzales on which the Department relied.<sup>35</sup> Other examples are plentiful, and there is thus ample precedent for production or review of the requested materials.<sup>36</sup>

After this exchange of letters, negotiations regarding the possible production of documents continued between Committee staff and the Department's Office of Legislative Affairs. Some progress was made on the Thompson case, and a provisional agreement was reached in which Committee majority and minority staff members were permitted to review some relevant documents on Department premises, including interview memorandum (FBI 302 forms and comparable records of state investigative agencies) and internal Department correspondence, as a predicate for an untranscribed briefing by Mr. Biskupic (offered without prejudice to a subsequent transcribed interview or hearing if deemed necessary). Some important materials were withheld even from this review process, however, including the final prosecution memorandum and documents containing grand jury information. Staff were able to review a detailed letter describing the Thompson investigation from Mr. Biskupic to the other members of the Thompson task force which, it was represented, largely contained the same facts and analysis

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<sup>34</sup> See Rosenberg, Feb. 6, 2002, H. Comm. On Government Reform, Statement Concerning The History of and Basis For Congressional Access to Deliberative Justice Department Documents (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").

<sup>35</sup> Those documents, which dealt with prosecution decisions in murder cases and related issues, and which the Department claimed were related to ongoing litigation, were produced 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 staff of the then-Government Reform Committee. See *Everything Secret Degenerates: The FBI's Use of Murderers As Informants*, Third Report of the Committee on Government Reform, 108<sup>th</sup> Congress, 2d Session, Report 108-414, at 132-33.

<sup>36</sup> 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. 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. And in the aftermath of the Ruby Ridge shootings, Congress received core deliberative materials reflecting the Department's prosecutorial and other decisions arising out of those shootings See Investigation of Hon. Harry M. Daughtery Before the S. Select Comm. on Investigation of the Attorney General, vols. 1-3, 68<sup>th</sup> Congress, 1st Session, 1924; Ruby Ridge: Report of the Subcomm. on Terrorism, Technology and Government Information of the S. Comm. on the Judiciary, 104th Congr., 1<sup>st</sup> Sess. (1995); Rosenberg, *supra*, at CRS-4 to CRS-10.

as the ultimate prosecution memorandum. In December 2007, Mr. Biskupic provided a confidential briefing on the Thompson case and related matters to Committee majority and minority staff.

Unfortunately, no meaningful progress has been made in obtaining additional information or access to any non-public materials from the Department regarding the Siegelman or Wecht matters, and despite Staff's request, the Department has been unwilling to make the Acting U.S. Attorney responsible for the Siegelman case available for a briefing comparable to the one provided by Mr. Biskupic. Mary Beth Buchanan, the United States Attorney responsible for the Wecht investigation, was interviewed on the record by Committee majority and minority staff in connection with the broader U.S. Attorney purge investigation, but the Department (and Committee minority staff) objected to questions regarding the Wecht matter and only limited information was obtained.<sup>37</sup> There has been one sworn, on-the-record interview of a witness in the Siegelman case, Dana Jill Simpson, in which both majority and minority staff participated.

On October 23, 2007, the Subcommittees held a joint hearing on the subject, and heard from witnesses on the Siegelman and Wecht cases, including former Attorney General Richard Thornburgh and former United States Attorney Doug Jones, as well as one of the authors of the statistical analysis discussed above.

On January 31, 2008, Chairman Conyers wrote to call Attorney General Mukasey's attention to his earlier promise to review both the Siegelman matter and the Shields/Cragan statistical study and asked for the Attorney General's views on those matters.<sup>38</sup> The Attorney General has not yet responded to that letter. On February 7, 2008, at an oversight hearing before the full Judiciary Committee, Representative Davis also raised the subject and Attorney General Mukasey stated that he had not made any inquiry into whether political influence had been brought to bear in the Siegelman case or in two others.<sup>39</sup> The following week, Representative Davis wrote the Attorney General and asked for a written explanation why no such investigation had been undertaken.<sup>40</sup> The Attorney General has not yet responded to that letter.

Attorney General Mukasey made clear in a recent speech that political factors should not play a role in bringing public corruption or other criminal cases. "After all," he stated, "a corruption investigation that is motivated by partisan politics is just corruption by another

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<sup>37</sup> Interview of Mary Beth Buchanan, June 15, 2007, at 149-51.

<sup>38</sup> Letter from Chairman John Conyers, Jr. to Attorney General Michael Mukasey, Jan. 31, 2008.

<sup>39</sup> Mukasey, Feb. 7, 2008, H. Comm. on the Judiciary, Hearing at 94.

<sup>40</sup> Letter from Rep. Artur Davis to Attorney General Michael Mukasey, Feb. 14, 2008.

name.”<sup>41</sup> Mukasey also claimed that he had seen “absolutely no evidence of any such impropriety in my time at the Department.”<sup>42</sup> One commentator responded, “My reaction, and apparently the reaction of much of Mukasey’s audience in San Francisco, was the same: Wake up and open your eyes.”<sup>43</sup> In any event, the Attorney General has not responded to the Committee and other congressional inquiries described above.

### **III. Cases Where Selective or Politicized Prosecution Has Been Alleged**

While the Committee has received information on numerous allegations of selective or politicized prosecution, the following cases have raised particular concern:

#### **A. Former Alabama Governor Don Siegelman**

Democrat Don Siegelman was governor of Alabama from 1998 to 2002, and previously had held numerous state offices. Mr. Siegelman lost his bid for re-election in 2002 to Republican Bob Riley by just several thousand votes, and was expected to run again in 2006.<sup>44</sup> He was at the time a “major political force” in Alabama and early polls indicated that he would defeat Governor Riley in a rematch.<sup>45</sup>

In May 2004, Mr. Siegelman was indicted by the United States Attorney for the Northern District of Alabama, Alice Martin, on charges related to alleged bid rigging in state contracts.<sup>46</sup> Those charges were dismissed before trial, however, when the prosecution could not produce evidence connecting Mr. Siegelman to the alleged misconduct.<sup>47</sup>

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<sup>41</sup> Remarks Prepared for Delivery by Attorney General Michael Mukasey, The Commonwealth Club of San Francisco, Mar. 27, 2008, *available at* [http://www.usdoj.gov/ag/speeches/2008/ag\\_speech\\_080327.html](http://www.usdoj.gov/ag/speeches/2008/ag_speech_080327.html).

<sup>42</sup> *Id.*

<sup>43</sup> Horton, *Mukasey and Public Integrity*, No Comment, Harper’s Magazine, Mar. 29, 2008.

<sup>44</sup> The election was marred by serious allegations of vote tampering, focused on the as-yet-unexplained shift of several thousands votes from Governor Siegelman to the challenger Bob Riley between vote counts in Baldwin County. Cason, *Riley claims win*, The Montgomery Advertiser, Nov. 7, 2002; Morgan, *Governor’s Role Remembered For ‘Fuzzy Numbers,’* Baldwin County Now, July 19, 2007.

<sup>45</sup> Jones, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 2; Cohen, *The Strange Case of an Imprisoned Alabama Governor*, New York Times, Sept. 10, 2007; and Barrow, *Riley’s Ratings are Low: Governor Would Trail Moore, Siegelman in 2006 Race*, Mobile Press-Register, Nov. 16, 2003.

<sup>46</sup> Rawls, *Judge Biased, Lawyers Contend*, Montgomery Advertiser, Sept. 21, 2004.

<sup>47</sup> Davis & McGrew, *Rulings Displease Federal Attorney*, Montgomery Advertiser, Oct. 6, 2004; and Hamburger & Savage, *Ex-Governor Says He Was Target of Republican Plot*, Los Angeles Times, June 26, 2007.

Several months later, a new indictment based on entirely different charges was brought under seal against Mr. Siegelman by the United States Attorney for the Middle District of Alabama, Leura Canary. That indictment was made public in October 2005, and it contained an array of charges under bribery, mail and wire fraud, RICO, and obstruction of justice theories. Many of these charges focused on alleged bribes or improper gifts from an Alabama lobbyist named Lanny Young to Mr. Siegelman; another allegation was that Alabama businessman Richard Scrushy had made a \$500,000 donation to a campaign for a state lottery initiative favored by Mr. Siegelman in exchange for appointment to a state medical board. Like Mr. Siegelman, Mr. Scrushy recently had been acquitted of charges brought by U.S. Attorney Martin in the Northern District of Alabama, so this indictment provided the Government with a second chance at prosecuting each of these two men.<sup>48</sup>

Trial was held in mid 2006. Mr. Siegelman was acquitted of 25 of the 32 charges, but was convicted of the charges related to the \$500,000 payment by Mr. Scrushy and of a single count of obstruction of justice which involved allegations of attempting to conceal a payment from Mr. Young that was used to purchase a motorcycle.<sup>49</sup> (Mr. Siegelman was not convicted of any bribery or similar charge related to that payment.) In June 2007, Mr. Siegelman was sentenced to 7 years, 4 months in prison (the prosecutors had requested 30 years).<sup>50</sup> Mr. Scrushy was also convicted of the charges related to the state medical board and was sentenced to 6 years, 10 months.<sup>51</sup>

On March 27, 2008, the Eleventh Circuit Court of Appeals reversed the district court and granted Mr. Siegelman's motion for release on bond pending appeal. The court specifically noted that Mr. Siegelman had "met his burden of showing that his appeal raises substantial questions of law or fact" that might ultimately lead to reversal of the conviction<sup>52</sup>

Concerns that politics may have played a role in the investigation and prosecution of Don Siegelman have been widely aired in the local and national press, culminating in a petition urging the Committee to open this inquiry that was signed by 44 former state Attorneys General, both

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<sup>48</sup> Farrell, *Scrushy Acquitted of All 36 Charges*, USA Today, June 28, 2005.

<sup>49</sup> Jones, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 8 (prosecution initially considered motorcycle issue "too trivial to bring as federal charges").

<sup>50</sup> Nossiter, *Former Alabama Governor Gets 7-Year Sentence in Bribery Case*, New York Times, June 29, 2007.

<sup>51</sup> Davidson, *HealthSouth's Scrushy Gets 6 Years in Prison*, Washington Post, June 29, 2007.

<sup>52</sup> March 27, 2008, Order of Eleventh Circuit in *United States v. Siegelman*, Case No. 07-13163-B at 4.

Democrats and Republicans, and received by the Committee in July 2007.<sup>53</sup> Republican former Attorney General of Arizona Grant Woods recently stated that he believes Mr. Siegelman was selected for prosecution to further the political interests of the Alabama Republican party: “I personally believe that what happened here is that they targeted Don Siegelman because they could not beat him fair and square. This was a Republican state and he was the one Democrat they could never get rid of.”<sup>54</sup>

*i. Allegations Regarding Political Interference and Karl Rove*

In May 2007, a Republican attorney from Northern Alabama named Jill Simpson wrote an affidavit stating that, in November 2002, she heard a prominent Alabama Republican operative named Bill Canary say that Karl Rove had contacted the Justice Department about bringing a prosecution of Don Siegelman.<sup>55</sup> Mr. Canary is married to the United States Attorney in the Middle District of Alabama, Leura Canary, and Ms. Simpson states in the affidavit that Mr. Canary also said that “my girls would take care of” Mr. Siegelman.<sup>56</sup> Ms. Simpson asked Mr. Canary who “his girls” were and Mr. Canary said they were his wife and Alice Martin, the U.S. Attorney for the Northern District of the state.<sup>57</sup>

On September 14, 2007, Committee staff conducted a sworn, on-the-record interview of Ms. Simpson in which she reaffirmed the statements in her affidavit and offered additional information. Most significantly, Ms. Simpson described a conversation in early 2005 in which Governor Riley’s son Rob, a colleague and friend of Ms. Simpson, told her that his father and Mr. Canary had again spoken to Karl Rove who had in turn communicated with the head of the Department’s Public Integrity Section about bringing a second indictment against Don Siegelman since the first case in Birmingham had been dismissed. According to Ms. Simpson, Mr. Riley also told her that Mr. Rove had asked the Department to mobilize additional resources to assist in the prosecution effort.<sup>58</sup> Mr. Riley also said that the case would be in the Middle District of Alabama and would be heard by Chief Judge Mark Fuller, a judge who Mr. Riley stated could be trusted to “hang Don Siegelman.”<sup>59</sup> And Mr. Riley claimed that the prosecution would try

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<sup>53</sup> Lipton, *Congressional Inquiry Urged in Prosecution of Ex-Governor*, New York Times, July 17, 2007.

<sup>54</sup> *The Prosecution of Siegelman*, 60 Minutes, CBS News, Aired Feb. 24, 2007, available at <http://www.cbsnews.com/stories/2008/02/21/60minutes/main3859830.shtml>.

<sup>55</sup> Affidavit of Dana Jill Simpson, May 21, 2007, ¶ 11-16.

<sup>56</sup> *Id.* ¶ 14.

<sup>57</sup> *Id.* ¶ 15.

<sup>58</sup> Interview of Dana Jill Simpson, Sept. 14, 2007, at 25-27.

<sup>59</sup> *Id.* at 56-57.

Mr. Siegelman and Mr. Scrushy together, in the hopes that Mr. Scrushy's unpopularity in the state would affect the proceedings against Mr. Siegelman.

Ms. Simpson's statements have been denied by Bill Canary, Rob Riley, and the other figures involved.<sup>60</sup> Mr. Rove himself made a brief, and curiously limited, comment on the matter in June 2007, stating "I know nothing about any phone call," but not addressing the underlying allegations.<sup>61</sup> (It has never been alleged that Mr. Rove was on the phone call described by Jill Simpson; the question for Mr. Rove is whether he directly or indirectly discussed the possibility of prosecuting Don Siegelman with either the Justice Department or Alabama Republicans.) More recently, appearing on Fox News in February 2008, Mr. Rove denied knowing Jill Simpson and challenged ancillary assertions she had made, but again did not address the main charge that he had pressed the Justice Department to prosecute Mr. Siegelman.<sup>62</sup> More recently still, Mr. Rove has elaborated by asserting to a reporter for GQ Magazine that Ms. Simpson is a "complete lunatic" who cannot be trusted and by presenting a statement in some form to 60 Minutes (though it is not clear whether he spoke directly to 60 Minutes or used a spokesman as Mr. Rove does not appear on camera) declaring that he never "never talked to the Department of Justice" about Mr. Siegelman.<sup>63</sup>

Available evidence raises questions about these denials. In an affidavit submitted to the Committee, for example, Mr. Riley stated that he did not recall any call occurring with Ms. Simpson in November 2002 as she had described. Two other men present with Mr. Riley on the date that Ms. Simpson claims she heard talk of Karl Rove having the Justice Department prosecute Don Siegelman also submitted affidavits stating even more forcefully that they believe

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<sup>60</sup> See, e.g., Beyerle, *Siegelman, Scrushy Sentencing Will Go On This Week as Scheduled*, Northwest Alabama TimesDaily, June 24, 2007; Zagorin, *Rove Named In Alabama Controversy*, Time, June 1, 2007.

<sup>61</sup> McCarter, *Siegelman awaits sentencing Tuesday*, Huntsville Times, June 24, 2007.

<sup>62</sup> See Statements of Karl Rove, Fox News, February 25, 2008, available at [http://tpmmuckraker.talkingpointsmemo.com/2008/02/rove\\_its\\_a\\_lie.php](http://tpmmuckraker.talkingpointsmemo.com/2008/02/rove_its_a_lie.php). Mr. Rove's denials largely concerned Ms. Simpson's assertion that he had asked her to attempt to obtain compromising photographs of Mr. Siegelman.

<sup>63</sup> DePaulo, *Karl Rove Likes What He Sees*, GQ Magazine Blog, April 2, 2008, available at <http://men.style.com/gq/blogs/gqeditors/2008/04/karl-rove-likes.html>; *Siegelman Future Hinges On Appeal*, 60 Minutes, CBS News, Apr. 6, 2008.

no such call ever took place.<sup>64</sup> However, Ms. Simpson provided cell phone records to the Committee that reflect an eleven minute call to Mr. Riley's number on that very morning.<sup>65</sup>

Other statements of Mr. Riley are also troubling. When Ms. Simpson first spoke out about her recollections regarding the Siegelman prosecution, Mr. Riley dismissed her as a distant acquaintance from their school days who he did not see for "13 or 14 years" after school.<sup>66</sup> But that characterization appears to have been at best misleading, as demonstrated by extensive records of joint legal work and client referrals over the past ten years between Ms. Simpson and Mr. Riley that Ms. Simpson provided to the Committee.<sup>67</sup> In addition, at the outset of the controversy, Mr. Riley stated that "Karl Rove has no idea who Rob Riley is,"<sup>68</sup> yet *Time Magazine* has reported that one of Ms. Simpson and Mr. Riley's joint clients recalls that "Rob Riley mentioned Karl Rove about four or five times as someone he was getting in touch with to help settle our business in Washington."<sup>69</sup>

Mr. Riley's comments about plans to have Mr. Scrushy and Mr. Siegelman tried jointly have also drawn notice from commentators who observe that, in January 2005, at just the time Mr. Riley raised the possibility of such a joint indictment with Jill Simpson, according to her testimony, Mr. Riley joined a large civil lawsuit pending against Mr. Scrushy's company.<sup>70</sup> Other counsel in that case would later observe that the existence of a criminal indictment against Mr. Scrushy "obviously helped" the civil case, which eventually settled for \$445 million, yielding what would necessarily have been a large fee payment to Mr. Riley.<sup>71</sup> This evidence thus offers at

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<sup>64</sup> See Affidavit of Rob Riley, Oct. 22, 2007, at 1; Affidavit of Matt Lembke, Oct. 22, 2007; Affidavit of Terry Butts, Oct. 19, 2007. On other issues, Mr. Riley's affidavit is even more qualified, stating for example that he never asked Karl Rove to assist on any "federal matter" without explaining what he considers a "federal matter" or whether he asked Mr. Rove to assist on any other type of matter.

<sup>65</sup> Davis, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Hearing at 32; Interview of Dana Jill Simpson, Sept. 14, 2007, Exhibit 4.

<sup>66</sup> Beyerle, *Siegelman, Scrushy Sentencing Will Go On This Week as Scheduled*, Northwest Alabama TimesDaily, June 24, 2007.

<sup>67</sup> Interview of Dana Jill Simpson, Sept. 14, 2007, at 30-31, Exhibit 5. Mr. Riley did not address the matter of his past friendship with Ms. Simpson, or his prior statements on the subject, in his affidavit.

<sup>68</sup> Beyerle, *Siegelman, Scrushy Sentencing Will Go On This Week as Scheduled*, Northwest Alabama TimesDaily, June 24, 2007.

<sup>69</sup> Zagorin, *Rove Linked to Alabama Case*, Oct. 10, 2007.

<sup>70</sup> Stein, *New Evidence In Siegelman Case Points To Republican Cabal*, Huffington Post, March 13, 2008.

<sup>71</sup> Id.

least some support for Ms. Simpson's testimony that Mr. Riley was discussing Mr. Scrushy's status in late 2004 or early 2005.

In October 2007, Committee majority staff contacted Rob Riley by telephone and requested that he submit to a sworn, on-the-record interview, just as Ms. Simpson had done. Mr. Riley said that he would consider the request but, at this point, Mr. Riley has not offered to be interviewed under oath.

Further evidence on the question whether Karl Rove or other senior figures played some role in the Siegelman prosecution was revealed at the October 23, 2007, joint Subcommittee hearing. At that hearing, former United States Attorney Doug Jones, who represented Mr. Siegelman from 2003 until early 2006, described a number of troubling facts regarding the Siegelman prosecution – for example, the statement by investigators that they “hoped” their work would implicate the Governor and that prosecutors engaged in discussions that Mr. Jones believes were not in good faith because the prosecutors had already obtained a sealed indictment against the Governor but did not disclose that key fact.<sup>72</sup> The heart of Mr. Jones' testimony, however, involved a series of events in late 2004 indicating that high-level Washington officials were driving the prosecution effort.

Mr. Jones testified that, by mid 2004, he and his team had been told by the federal prosecutors in Alabama that most of the issues under investigation had been “written off” and were not expected to lead to charges. While certain issues required some further investigation, including the donation to the lottery fund by Mr. Scrushy, the prosecutors acknowledged there were significant gaps in the relevant evidence.<sup>73</sup> Mr. Jones testified that, based on his discussions with the prosecutors at this time, he and his colleagues “felt like [the] case was coming to a close.”<sup>74</sup> In late fall, however, the lead Alabama prosecutor substantially changed his message, telling Mr. Jones that “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.”<sup>75</sup>

After this word came down from Washington, Mr. Jones explained that the case transformed into a much more focused and aggressive effort to find charges on which to indict Mr. Siegelman:

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<sup>72</sup> Jones, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 3, 13.

<sup>73</sup> Id. at 8-9.

<sup>74</sup> Jones, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Hearing at 39.

<sup>75</sup> Id.

“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 [state] Attorney General’s office, the FBI and the feds now seemed 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 fishing around for anything they could find against an individual.”<sup>76</sup>

This testimony is especially troubling when considered in light of Ms. Simpson’s testimony regarding her conversations with Rob Riley. Ms. Simpson testified that Rob Riley told her that, in the latter part of 2004, Karl Rove had approached the head of the Public Integrity Section of the Department about bringing another case against Mr. Siegelman and giving more resources to the prosecution.<sup>77</sup> Thus, according to the sworn testimony of two different witnesses – who did not know each other and who were not aware of the other’s testimony when they spoke<sup>78</sup> – at the same time that Karl Rove was pressing Justice Department leadership to indict Don Siegelman, Washington officials informed the line prosecutors working the case, who had just recently expressed real doubts about bringing charges, to go back over the entire matter. And as a result of that direction from Washington, the prosecution did in fact launch an aggressive new effort to find indictable charges against Mr. Siegelman.

Lead Siegelman prosecutor Steve Feaga has made press statements denying that he ever told Doug Jones that Washington officials had directed his team to go back over the case. Similarly, the Acting U.S. Attorney for this matter Louis Franklin has said that Mr. Jones’ statements are “absolutely not true.”<sup>79</sup> But other evidence strongly corroborates Mr. Jones’ testimony on this point. For example, an Alabama attorney named Mark White, who represented several witnesses related to the Siegelman matter and is currently President-Elect of the Alabama State Bar, has stated that, like Mr. Jones, he had been advised by the prosecution in 2004 that the investigation was coming to a conclusion and that he was later told by Mr. Feaga that

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<sup>76</sup> Jones, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 12.

<sup>77</sup> Interview of Dana Jill Simpson, Sept. 14, 2007, at 49-52.

<sup>78</sup> Although the transcript of Ms. Simpson’s deposition had been publicly released by the time Mr. Jones testified before the Committee, he had described the same events well before that release.

<sup>79</sup> Blackledge & Orndorff, *Prosecutor Says Montgomery Led Siegelman Case*, Birmingham News, Oct. 28, 2007; Editorial, *Congress Should Expand Prosecution Probe*, Tuscaloosa News, Oct. 25, 2007; Zagorin, *Rove Linked To Alabama Case*, Time Magazine, Oct. 10, 2007.

“Washington’ had asked that another look be taken at the entire investigation.”<sup>80</sup> Art Leach, a former federal prosecutor and counsel to Mr. Scrushy in this matter, has informed the Committee that, in 2004, “for a variety of reasons it was my opinion that the matter was closed.”<sup>81</sup> In mid-2005, however, “the case came back to life.”<sup>82</sup>

Other evidence also supports the contention that senior officials at the Department or the White House pushed this prosecution. Mr. Leach described a notable conversation he had with the then-acting head of the Department’s Public Integrity Section, Andrew Lourie.<sup>83</sup> According to Mr. Leach, he and Mr. Lourie met on April 6, 2006, to discuss the possibility of resolving the matter against Mr. Scrushy before trial. Mr. Leach states that he had worked out an arrangement that was acceptable to the line prosecutors working the case, and that the purpose of this meeting was to obtain approval for the deal. Mr. Leach recalls that the meeting went well, and he believed Mr. Lourie would approve the proposed resolution. A week later, however, the proposed deal was rejected. When Mr. Leach asked Mr. Lourie why he would not approve a deal that the local prosecutors had supported, “Lourie informed me that the decision was made over his head.”<sup>84</sup> Mr. Leach asked if that meant the head of the Criminal Division, Assistant Attorney General Alice Fisher, had made the decision, and was told “the decision had been made higher than the AAG for the Criminal Division.”<sup>85</sup> Mr. Leach reports that he was “puzzled” by this response because he “could not imagine a decision like this rising to that level of the Department of Justice.”<sup>86</sup> Needless to say, the only “higher” levels of government than the office of the Assistant Attorney General for the Criminal Division for an issue such as this would be the offices of the Attorney General and the Deputy Attorney General (at the time occupied by Alberto Gonzales, his Chief of Staff Kyle Sampson, and Paul McNulty and his Deputy Mike Elston) and the White House itself.

Finally, in the wake of the Subcommittees’ joint hearing on this issue, several important press accounts have described how career prosecutors involved in the matter had opposed prosecuting Siegelman, but were overruled. In an interview with the Birmingham News, for example, Acting U.S. Attorney Franklin revealed the Public Integrity Section trial lawyer John Scott had doubts about continuing the matter in mid-2004. Assistant U.S. Attorney Feaga has

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<sup>80</sup> Letter from Mark White to H. Comm. on the Judiciary staff, Dec. 7, 2007.

<sup>81</sup> Letter from Art Leach to Chairman Conyers, Apr. 14, 2008.

<sup>82</sup> Id.

<sup>83</sup> Id.

<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> Id.

stated that, at one point, Mr. Scott “felt there was not enough evidence to go forward.”<sup>87</sup> That statement echoes one made by Charles Niven, a 26-year veteran career prosecutor who served as Acting U.S. Attorney for the Siegelman case prior to Louis Franklin. Mr. Niven has stated that, during his tenure, “there wasn't sufficient evidence to seek an indictment against Governor Siegelman.”<sup>88</sup> While Mr. Niven retired in January 2003, and was not privy to all the evidence ultimately gathered by the prosecution, his professional assessment of this matter is consistent with the account offered by Mr. Jones in which career prosecutors in Alabama had concluded that the matter was not prosecution-worthy until word came down from “Washington” officials at the very highest level of the Department or the Administration demanding action.

Recently, Karl Rove’s attorney has reportedly stated that Mr. Rove would be willing to testify to Congress concerning the Siegelman case.<sup>89</sup> Among other important steps, such testimony could be very useful in resolving the troubling questions that have been raised.

### *ii. Allegations Regarding Politically Selective Prosecution*

*Time* magazine has reported that lobbyist Lanny Young – a central witness against Mr. Siegelman – had told investigators early in the investigation that he had made payments and provided free campaign items to Republican politicians just as he had to Mr. Siegelman.<sup>90</sup> But the *Time* report suggests that these charges against Republicans were not investigated.<sup>91</sup> Also troubling is that these charges were made while U.S. Attorney Leura Canary was still responsible for the investigation, but they involved Republican politicians that her husband was very close to and for whom he had worked. Other conflicts appear to have been present, as state investigators who heard those claims worked in the office of one of the Republican officials accused of misconduct, and another federal prosecutor named Julia Weller also heard them, and her husband is apparently a close advisor to the same officials.<sup>92</sup> Neither Ms. Canary nor Ms. Weller nor any of the investigators appears to have taken any steps to address these apparent conflicts of interest at the time, however, such as immediately recusing themselves from the investigation or handing

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<sup>87</sup> Johnson, *Franklin Says Justice Cool to Siegelman Grand Jury*, Associated Press, Nov. 3, 2007; Blackledge & Orndorff, *Prosecutor Says Montgomery Led Siegelman Case*, Birmingham News, Oct. 28, 2007.

<sup>88</sup> Blackledge, *Prosecutor: No Political Push in Siegelman Case*, Birmingham News, Oct. 31, 2007.

<sup>89</sup> See Comments of Attorney Robert Luskin to MSNBC, April 7, 2008. available at <http://thinkprogress.org/2008/04/07/rove-testify-siegelman/>.

<sup>90</sup> Zagorin, *Selective Justice in Alabama?*, Time Magazine, Oct. 4, 2007.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*; Orndorff, *Davis Says Siegelman Prosecution is Unjust*, Birmingham News, Oct. 24, 2007; Horton, *Siegelman Updates*, Harpers No Comment, Nov. 1, 2007.

those charges off to fresh investigators or prosecutors untainted by potential conflict.

It is difficult to assess whether Mr. Young's assertions regarding Republicans were investigated or fairly evaluated without access to prosecution files and personnel, and the existing public record, and in particular the many statements on the subject by Acting U.S. Attorney Franklin, can only be described as confusing. For example, the Acting U.S. Attorney stated that "the former governor went to trial on issues unrelated to the assertions cited in the [Time] article."<sup>93</sup> But the article states, accurately, that "[t]he information provided by the landfill developer was central to roughly half the 32 counts that Siegelman faced,"<sup>94</sup> with Mr. Siegelman being acquitted of virtually all of those charges. In another comment, the Acting U.S. Attorney stated that his office "followed up on what might be appropriate."<sup>95</sup> Yet *Time* described substantial allegations involving Senator Jeff Sessions, and a spokesman for Sen. Sessions stated that the Senator's office was "never contacted by investigators about [these] allegations."<sup>96</sup> Recently, Mr. Siegelman's counsel wrote to Attorney General Mukasey suggesting that a special counsel be appointed to investigate the selective prosecution allegations, noting that the court considering Siegelman's appeal will not be called upon to address these issues.<sup>97</sup> The issue of potential selective prosecution remains of significant concern.<sup>98</sup>

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<sup>93</sup> Lyman, *Time Raises Questions Over Political Donations*, Mobile Press Register, Oct. 5, 2007.

<sup>94</sup> Zagorin, *Selective Justice in Alabama?*, Time Magazine, Oct. 4, 2007.

<sup>95</sup> Lyman, *Time Raises Questions Over Political Donations*, Mobile Press Register, Oct. 5, 2007.

<sup>96</sup> Chandler & Orendorff, *Lobbyist Also Gave to GOP*, Birmingham News, Oct. 5, 2007.

<sup>97</sup> Letter from Vincent F. Kilborn III to Attorney General Michael Mukasey, Feb. 27, 2008.

<sup>98</sup> In response to the *Time* article, the Acting U.S. Attorney spoke quite freely about investigative steps that he and his team had taken on this issue and about conclusions that he and his investigators reached. For example (all quotes from the Lyman and Chandler & Orendorff articles cited above):

- "[T]he Acting U.S. attorney in the Siegelman case said he and federal investigators asked Young about the contributions several times but saw nothing criminal on the part of Sessions and Pryor."
- "According to [the Acting U.S. Attorney], Young indicated that 'he was hoping' to get something in return, but there was no deal. 'Yes, we pressed him. . . . He was real clear that was nothing like his relationship with Siegelman.'"
- "'We followed up on what might be appropriate,' he said. 'We followed up on those things we deemed appropriate. And it had nothing to do with what political party they belonged to.'"
- "[The Acting U.S. Attorney] said Young named other Democrats besides Siegelman."

Additionally, the Acting U.S. Attorney gave a public statement on Oct. 5, 2007, in which he said:

- "All viable federal felony offenses discovered during the investigation were appropriately

### *iii. Trial Issues*

Some have argued that the aggressive theory relied on by the prosecution team indicates that this was not an investigation driven by the facts but instead was motivated by an effort to find any arguable basis on which to indict the former Governor.<sup>99</sup> This view focuses on the facts that (i) the investigation was unusually lengthy and far-ranging, cycling and recycling through multiple theories and allegations and running fully five years before an indictment was brought; (ii) the cash donation by Scrusby was not to Mr. Siegelman, or even to Mr. Siegelman's campaign, but instead was to a separate ballot initiative campaign and did not ever go to Mr. Siegelman and did not directly benefit Mr. Siegelman in any obvious way (the only arguable benefit to Mr. Siegelman that appears to have been identified by the prosecution was that, because Mr. Siegelman had guaranteed some of the initiative campaign's debts, the payment shielded him in the event the campaign should default); (iii) Mr. Scrusby previously had been appointed to the exact same state board by Republican governors three times before he was appointed by Mr. Siegelman; and (iv) criminalizing campaign donations because the giver later received an appointment is very unusual – one former federal prosecutor and law professor at University of California Berkeley stated “It seems to me the conduct in this case was similar to a lot of what we take as normal for politics.”<sup>100</sup>

Numerous other issues regarding the conduct of the investigation and the trial have surfaced during the staff's work on this matter. Most of these pertain to the conduct of the prosecution team and the strength or weakness of the evidence against Mr. Siegelman, issues that are vitally important – especially in a case where the jury twice reported to the judge that it was

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and properly addressed. Political party affiliation played no role in my decision making.”  
Statement from Acting U.S. Attorney Louis Franklin, Sr., United States Attorney's Office,  
Middle District of Alabama, Oct. 5, 2007, *available at*  
<http://www.wsfa.com/Global/story.asp?S=7176844&nav=0RdE>.

These statements of the Acting U.S. Attorney once again demonstrate that the Department's blanket withholding of documents on this and other matters under investigation by the Committee is overbroad and that its asserted confidentiality interests only go so far. Plainly, some such material may be released without compromising the functioning of the Department, since the Acting U.S. Attorney has elected to release information that he considers favorable.

<sup>99</sup> See, e.g. Jones, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 12.

<sup>100</sup> *Nossiter, Democrats See Politics in Governor's Jailing*, New York Times, Sept. 11, 2007. Republican former Attorney General of Arizona Grant Woods also sees the charges this way, agreeing that the Siegelman charges were “exactly” analogous to prosecuting bribery where someone donated money to a presidential campaign and was later appointed to an ambassadorship. *The Prosecution of Siegelman*, 60 Minutes, CBS News, Aired Feb. 24, 2007, *available at* <http://www.cbsnews.com/stories/2008/02/21/60minutes/main3859830.shtml>.

deadlocked over 11 days of deliberations.<sup>101</sup> These include: issues regarding possible jury misconduct and the sufficiency of the court's investigation of emails allegedly exchanged by members of the jury prior to deliberations<sup>102</sup>; issues regarding the alleged bias of the trial judge, and the judge's somewhat remarkable series of rulings in response to the Eleventh Circuit's orders on the issue of release pending appeal, and also including the judge's failure to recuse from this matter<sup>103</sup>; the conduct of prosecutors in negotiating with already-indicted defendants without disclosing the existence of the sealed indictments<sup>104</sup>; the Acting U.S. Attorney's apparent reference to one of defense counsel as a "sleaze" in open court<sup>105</sup>; issues regarding the pressure brought to bear by prosecutors on cooperating witnesses and allegations that testimony may have been improperly coached<sup>106</sup>; issues regarding the alleged withholding of Brady and other potentially exculpatory materials in potential violation of the defendants' rights<sup>107</sup>; the alleged contradiction between the government's expansive interpretation of the federal "mail fraud" statute in the Siegelman case and the position adopted by the U.S. in other cases<sup>108</sup>; and issues

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<sup>101</sup> Whitemire, *Ex-Governor and Executive Convicted of Bribery*, New York Times, June 30, 2006.

<sup>102</sup> Johnson, *Federal Judge Denies New Trial for Former Alabama Gov. Siegelman, ex-HealthSouth CEO Scrushy*, Associated Press, Dec. 13, 2006.

<sup>103</sup> Horton, *Judge Fuller and the Trial of Don Siegelman*, No Comment, Harper's Magazine, Aug. 3, 2007; Horton, *The Pork Barrel World of Judge Mark Fuller*, No Comment, Harper's Magazine, Aug. 6, 2007; Horton, *2003 Affidavit Raises More Serious Questions About Siegelman Judge*, No Comment, Harper's Magazine, Oct. 16, 2007; Affidavit of Paul Benton Weeks, III, July 25, 2003; Chandler, *Federal Judge Explains Reasons for Keeping Siegelman in Prison While Awaiting Appeal*, The Birmingham News, Jan. 3, 2008.

<sup>104</sup> Jones, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 13-14; see also Letter from Art Leach to Chairman Conyers, Apr. 14, 2008 (describing favorable deals offered to Mr. Scrushy if he would implicate Mr. Siegelman in a crime and complaining of prosecutors' conducting plea negotiations without informing him of the indictment).

<sup>105</sup> Horton, *B'ham News Dispenses More Koolaid*, No Comment, Harper's Magazine, Feb. 26, 2008.

<sup>106</sup> Evans, *Ex-Al. Gov. Wants Special Prosecutor*, Associated Press, Feb. 26, 2008. One close observer of the trial described the testimony of key prosecution witness Nick Bailey this way: "He had such a pattern of lying and he was so unwilling to admit to anything, that it was nearly impossible to gauge if there was ever a time he was telling the truth. And the over-coaching was painfully obvious." Report From Birmingham, May 5, 2006, *available at* <http://www.scrushy-report.com/wordpress/index.php?p=244>; see also Letter from Art Leach to Chairman Conyers, Apr. 14, 2008 (describing favorable deals offered to Mr. Scrushy if he would implicate Mr. Siegelman in a crime).

<sup>107</sup> *The Prosecution of Siegelman*, 60 Minutes, CBS News, Aired Feb. 24, 2007, *available at* <http://www.cbsnews.com/stories/2008/02/21/60minutes/main3859830.shtml>.

<sup>108</sup> See Letter from Vincent F. Kilborn III (representing Mr. Siegelman) to Solicitor General Paul Clement, Mar. 6, 2008. Mr. Kilborn's letter suggests that the government in the Siegelman case may well be taking a position on the interpretation of the statute that the Solicitor General has "determined to be incorrect as a matter of law" and has asked that the matter be reviewed. Id. at 3. The Solicitor General responded by indicating that his office had

regarding the propriety and accuracy of the unusually extensive public comments and press releases made by the local prosecutor in this matter.<sup>109</sup> Supporters of Mr. Siegelman have also pointed out that there have been official complaints by Mr. Siegelman and others about the trial judge, and members of the prosecution and investigative team, that they claim have not been properly investigated or addressed.<sup>110</sup> In addition, a leading commenter on the matter has criticized an aggressive and ongoing prosecution effort by Alabama U.S. Attorney Alice Martin against a number of state Democratic officeholders and has linked these cases to the Siegelman matter.<sup>111</sup> Such matters are of great concern but may most appropriately be assessed by internal oversight mechanisms within the Department.

## **B. Wisconsin Procurement Official Georgia Thompson**

Georgia Thompson, a Wisconsin state procurement section chief and a career civil servant, was convicted in 2006 of misapplication of federal funds and “honest services” mail fraud based on charges that she improperly steered the award of a large services contract to a travel agency whose principals had made donations to Wisconsin’s Democratic governor.<sup>112</sup> Ms. Thompson’s conviction was overturned in a sharp rebuke to the prosecution on April 5, 2007, by the Seventh Circuit Court of Appeals, which stated that the “evidence [was] beyond thin” and described the prosecution’s legal theories as “preposterous.”<sup>113</sup> In particular, the court observed that the winning company had in fact submitted the lowest bid for the contract and that other evidence of possible wrongdoing by Ms. Thompson was lacking: “There is not so much as a whiff of a

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examined the issue and is “satisfied” that there is no inconsistency with positions taken in other matters. Letter from Solicitor General Paul Clement to Vincent F. Kilborn, III, Mar. 21, 2008.

<sup>109</sup> Horton, *General Clark Excoriates Justice Department Over Siegelman Case*, No Comment, Harper’s Magazine, Dec. 2, 2007; see also footnote 98 supra.

<sup>110</sup> Horton, *2003 Affidavit Raises More Serious Questions About Siegelman Judge*, No Comment, Harper’s Magazine, Oct. 16, 2007; Letter from Thomas T. Gallion, III and Donald R. Jones, Jr. (representing John W. Goff) to Attorney General Michael Mukasey, H. Marshall Jarrett, Counsel, Office of Professional Responsibility, and Office of the Inspector General, U.S. Dept. of Justice, Nov. 16, 2007; Letter from Don Siegelman to J. Anthony McLain, General Counsel, Alabama State Bar, and H. Marshall Jarrett, Office of Professional Responsibility, U.S. Dept. of Justice, Feb. 10, 2005; Letter from Don Siegelman to Attorney General Alberto Gonzales and James B. Comey, Deputy Attorney General, U.S. Dept. of Justice, June 13, 2005.

<sup>111</sup> Horton, *Another Election Season, Another Political Prosecution in Alabama*, No Comment, Harper’s Magazine, Feb. 1, 2007; Horton, *Of Crime and Indifference*, No Comment, Harper’s Magazine, Feb. 14, 2008; Horton, *No Time for Rest in the War on Teachers*, No Comment, Harper’s Magazine, Feb. 16, 2008.

<sup>112</sup> Foley, *Federal Judge Orders Thompson Released From Prison*, Associated Press, Apr. 5, 2007.

<sup>113</sup> Walters, *Ex-State Official Freed*, Milwaukee Journal-Sentinel, Apr. 5, 2007; U.S. v. Thompson, 484 F.3d 877 (7th Cir. 2007).

kickback or any similar impropriety. Nor does the prosecution contend that Thompson knew or cared about [the winning bidder's] contributions.”<sup>114</sup>

While there was some evidence that Ms. Thompson had told the other members of the bid evaluation group that the winning bidder had to be selected for “political” reasons, it was not at all clear what she meant by “political” in this context. The court observed that, if her bosses (who were political appointees) wanted the cheapest provider selected for a large government contract so that they could show fiscal responsibility, that would be a “political” reason for the selection but not a wrongful one. Similarly, if Ms. Thompson’s statement simply meant that a Wisconsin company, such as the winning bidder, had to be selected over an out-of-state company, such as the runner up, that too would be a “political” reason that would not be unlawful.<sup>115</sup>

The Court of Appeals, finding that no crime had been committed, acquitted Ms. Thompson from the bench, declaring her “innocent” and issuing a remarkable order on the day of the oral argument stating “Thompson is entitled to immediate release from prison” and that “the United States must make arrangements so that she may be released before the close of business today.”<sup>116</sup> That highly unusual action stirred interest in and concern about the case among outside observers.<sup>117</sup> After hearing about the case several weeks later, an official in the Department of Justice’s Public Integrity Section also expressed concern, writing an email to a colleague asking “How in the heck did this case ever get brought?”<sup>118</sup>

Concern about the role politics may have played in the Thompson case has arisen based on a series of facts. First, in April 2007, Committee staff discovered that the name of the prosecuting U.S. Attorney Steven Biskupic appeared on a March 2005 list of U.S. Attorneys to be considered for firing that was compiled by Kyle Sampson, former Chief of Staff to Attorney General Gonzales.<sup>119</sup> While the Committee’s investigation into the U.S. Attorney firings has not finally

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<sup>114</sup> United States v. Thompson, 484 F.3d 877 (7<sup>th</sup> Cir. 2007).

<sup>115</sup> Id.

<sup>116</sup> Order, United States v. Thompson, No. 06-3676, United States Court of Appeals for the Seventh Circuit, April 5, 2007.

<sup>117</sup> See Cohen, *A Woman Wrongly Convicted and a US Attorney Who Kept His Job*, New York Times, Apr. 16, 2007.

<sup>118</sup> Email from Craig Donsanto, Director, Election Crimes Branch U.S. Dept. of Justice, to Raymond Husler, Deputy Chief for Policy and Administration, Public Integrity Section, May 3, 2007.

<sup>119</sup> Documents provided by the U.S. Dept. of Justice to the H. Comm. on the Judiciary in the U.S. Attorneys investigation, OAG 005 - OAGN 008. The Committee has only been provided with a redacted version of OAG 005 but Committee staff has reviewed the unredacted version of this document and can confirm public reports that Mr. Biskupic’s name is one of those that Kyle Sampson states he has added to the list “based on some additional

determined why Mr. Biskupic was targeted for firing, because Kyle Sampson claims not to remember the reason and White House information is not yet available pending resolution of the Administration's executive privilege claims,<sup>120</sup> the most likely explanation appears to be concern by Karl Rove about Mr. Biskupic's record in bringing "vote fraud" cases that Mr. Rove considered politically useful. Department documents show that Mr. Rove had personally reviewed information about Mr. Biskupic's performance on such cases, and that, the very month before Mr. Biskupic was placed on the firing list, Mr. Rove apparently had noted on a document discussing alleged vote-fraud activity in Mr. Biskupic's district "Discuss w/Harriet."<sup>121</sup>

The investigation of Ms. Thompson arose over the summer following Mr. Biskupic's placement on the firing list, and there is no dispute that the matter was politically useful to Wisconsin Republicans. A New York Times Editorial explained that "The prosecution was a boon to [Democratic Wisconsin Governor Jim] Doyle's opponent. Republicans ran a barrage of attack ads that purported to tie Ms. Thompson's 'corruption,' to Mr. Doyle."<sup>122</sup> And in a letter to Chairman Conyers, counsel to Ms. Thompson's union made a similar point, noting that Republican interests spent "millions of dollars" on ads making political use of the Thompson case.<sup>123</sup>

Finally, in January 2006, the same month that Mr. Biskupic indicted Ms. Thompson, Kyle Sampson created a new draft of the firing list and removed Mr. Biskupic's name from consideration.<sup>124</sup> Mr. Sampson was similarly unable to provide a plausible explanation as to why he removed Mr. Biskupic from the list, claiming only that he recalled Deputy Attorney General McNulty warning him that it might anger former Committee Chairman Sensenbrenner if Mr. Biskupic were asked to resign.<sup>125</sup> That claimed reason, of course, conflicts with the ample

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information I got tonight."

<sup>120</sup> Interview of Kyle Sampson, Apr. 18, 2007, at 50-52.

<sup>121</sup> Document provided by U.S. Dept. of Justice to the H. Comm. on the Judiciary in U.S. Attorneys investigation, OAG 850-51.

<sup>122</sup> Editorial, *Another Layer of Scandal*, New York Times, Apr. 9, 2007.

<sup>123</sup> Letter from Timothy E. Hawks, Esq. to Chairman John Conyers, Jr., Oct. 10, 2007.

<sup>124</sup> Document provided by U.S. Dept. of Justice to the H. Comm. on the Judiciary in U.S. Attorneys investigation, OAG 20-21. The Committee has only been provided with a redacted version of OAG 20-21, but Committee staff has reviewed the unredacted version of this document and can confirm public reports that Mr. Biskupic's name is not present on the list at this point.

<sup>125</sup> Interview of Kyle Sampson, Apr. 18, 2007, at 57.

evidence that, in other cases, U.S. Attorneys were asked to resign even though doing so would, and did, anger powerful politicians, including Republicans.<sup>126</sup>

At the confidential staff briefing held on December 17, 2007, as he has previously in the press, Mr. Biskupic forcefully denied that political considerations played any role in his decisions regarding the Thompson case. He denied receiving any political pressure regarding this matter, denied that the investigation or indictment was in any way influenced by political considerations, and stated that he did not even know that he was on the purge list or that he faced the possibility of being fired until the forced resignations became national news in March 2007. Mr. Biskupic further explained that the charging decision had been made by a task force of state and federal officials, including both Republicans and Democrats. At the heart of the matter, explained Mr. Biskupic, were statements by the members of the bid selection team that Ms. Thompson had told them that the contract had to be awarded to the winning company for “political” reasons, and the feeling among virtually all those individuals that something “wrong” had occurred.

Staff found this briefing, which included ample opportunity for questioning of Mr. Biskupic on the Thompson matter and a range of related topics, highly constructive and are disappointed the Department would not consider a similar approach regarding the other matters under investigation. Mr. Biskupic appeared credible and forthright, and the investigation benefitted greatly by hearing directly from the United States Attorney and reviewing at least some of the key documents. However, even with this opportunity, it remains the case that the Department has not provided full access to all relevant materials, including Mr. Biskupic’s personal notes, the final prosecution memorandum, and other materials containing grand jury information.

After reviewing all the available information, Staff (like some of Mr. Biskupic’s colleagues at the Department) remain troubled by the aggressiveness reflected in the decision to charge on these facts.<sup>127</sup> The preindictment letter, described as similar to the prosecution memorandum, did not reflect significant grappling with the legal and evidentiary weaknesses of this prosecution that would be expected in a document of this sort. For example, although Ms. Thompson was believed by the prosecution to have steered the reward to the winner, on

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<sup>126</sup> For example, in response to the firing of U.S. Attorney Paul Charlton of Arizona, Senator Kyl wrote the Arizona Republic: “I was not ‘fine’ with the decision made by the Attorney General to dismiss Charlton, despite the suggestion in an e-mail from a Justice Department staffer. In fact, when I was notified by the Attorney General, I asked for a meeting to discuss his decision. At the conclusion of the meeting I asked that he reconsider his decision and allow Charlton to stay on. Charlton decided to leave the Department before the Attorney General acted on my request. Paul Charlton is an excellent lawyer and was a superb U.S. Attorney. His reputation as such remains intact, which is more than I can say for officials at Justice.” Letter from Sen. John Kyl to the Editor of the Arizona Republic, Mar. 18, 2007

<sup>127</sup> One leading commentator appears to agree, writing in April 2007, “I just read [the court’s opinion], and it’s pretty shocking how aggressive the prosecution’s theory was[.]” Eugene Volokh, *Georgia Thompson Decision*, Apr. 20, 2007, available at [http://volokh.com/archives/archive\\_2007\\_04\\_15-2007\\_04\\_21.shtml#1177108127](http://volokh.com/archives/archive_2007_04_15-2007_04_21.shtml#1177108127).

Ms. Thompson's initial round of scoring, she rated that company fifth among bidders. That fact, like the facts that the campaign contributions alleged to have driven this process were not known to Ms. Thompson and that there was no meaningful personal benefit to Ms. Thompson from the award, was acknowledged in passing, but the letter did not meaningfully consider the impact of those issues on whether a solid conviction could be obtained or, more importantly, whether the matter should even be charged. In an environment where it has been estimated that Administration prosecutors have investigated local Democratic politicians at a nearly 6 to 1 rate over Republicans,<sup>128</sup> there are ongoing concerns about the prosecution culture in the Bush Department of Justice and its potentially corrosive impact on the judgment even of career prosecutors such as Mr. Biskupic. Further review of this matter by the Department's Office of Inspector General, or others that would have greater access to the relevant personnel and information, and the impact, if any, of politics on the prosecution appears warranted.

### **C. Allegheny County Coroner Dr. Cyril Wecht**

U.S. Attorney Mary Beth Buchanan's decision to prosecute Dr. Cyril Wecht, a prominent 76-year-old Democrat who was the coroner in Allegheny County, Pennsylvania, has also engendered controversy. Dr. Wecht was frequently a candidate and holder of elective public office and has been an outspoken critic of Republican candidates, office-holders, and polices. It has been contended that Dr. Wecht's case is indicative of other prosecutions in the Western District of Pennsylvania. Since beginning her tenure as U.S. Attorney in the Western District in 2001, Ms. Buchanan has apparently never brought corruption charges against a Republican official, and has only prosecuted officeholders who are Democrats.<sup>129</sup> In addition to Dr. Wecht, Ms. Buchanan conducted highly visible grand jury investigations during the run-up to the 2006 elections of Tom Murphy, former Democratic Mayor of Pittsburgh, and Peter DeFazio, the former Democratic Sheriff of Allegheny County.<sup>130</sup> During the same period, Ms. Buchanan did not bring a single charge against any Republican, including declining to prosecute former Republican Senator Rick Santorum for allegedly defrauding a local community by claiming residency when he and his family resided in Virginia.<sup>131</sup>

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<sup>128</sup> Shields, Oct. 23, 2007, Subcomms. On Crime, Terrorism, and Homeland Security and Commercial and Admin. Law, Hearing at 16.

<sup>129</sup> Interview of Mary Beth Buchanan, June 15, 2007, at 145-146.

<sup>130</sup> Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 7.

<sup>131</sup> Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 7. Mr. Thornburgh also testified that "[i]n 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 instead." Id.

Dr. Wecht has contended that partisan political considerations motivated his indictment on so-called public corruption and alleged private mail and wire fraud. Dr. Wecht was charged in an 84-count federal indictment with misusing his office and personally enriching himself by, among other things, striking a deal with a local university to trade unclaimed cadavers for university lab space.<sup>132</sup> He claims that Ms. Buchanan expanded the federal mail fraud statutes “so far into matters of state government that it could be used to regulate theft of ‘pencils from the office supply cabinet.’”<sup>133</sup> He further argues that Ms. Buchanan improperly crafted a federal case out of alleged violations of Home Rule Charters, County Codes, and State Ethic Provisions.<sup>134</sup> In short, Dr. Wecht maintains that the indictment lacks the traditional indicia of a public corruption prosecution.<sup>135</sup>

Dr. Wecht also alleges that partisan politics motivated the manner in which the case has been prosecuted. Claiming Dr. Wecht was a risk of flight to Israel, Ms. Buchanan advised his defense lawyers, including former Attorney General Richard Thornburgh, that her office intended to arrest Dr. Wecht.<sup>136</sup> Despite repeated offers by Dr. Wecht and his lawyers that he self-surrender and voluntarily appear in court to be arraigned, Ms. Buchanan insisted on a publically humiliating “perp walk.”<sup>137</sup> 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.”<sup>138</sup>

In court filings, Dr. Wecht has stated that Ms. Buchanan’s office inflamed the press by making inappropriate statements.<sup>139</sup> The record indicates that Ms. Buchanan issued a detailed

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<sup>132</sup> Ward, *Motive of Wecht deal talks questioned*, Pittsburgh Post-Gazette, June 7, 2007. On January 4, 2008, U.S. District Judge Arthur J. Schwab granted the government’s motion to dismiss 43 of the mail and wire fraud charges against Dr. Wecht. Ward, *43 of 84 Wecht charges dropped*, Pittsburgh Post-Gazette, Jan. 5, 2008. The government claimed that it would help streamline the case and save the court time.

<sup>133</sup> Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 3.

<sup>134</sup> Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 2.

<sup>135</sup> Id.

<sup>136</sup> Ward, *Wecht Lawyers Defend Selves in Brief; U.S. Prosecutors Want Attorneys Jailed, Barred from Federal Court*, Pittsburgh Post-Gazette, June 16, 2007; Defendant’s Response to Motion for Sanctions (Doc. No. 477), U.S. vs. Wecht, June 15, 2007, at 7.

<sup>137</sup> Ward, footnote 136 supra.

<sup>138</sup> Id.

<sup>139</sup> United States v. Wecht, 484 F.3d 194, 198 (3d Cir. 2007).

press release immediately after Dr. Wecht's indictment and discussed the government's case against Dr. Wecht at a subsequent press conference about the importance of public corruption cases.<sup>140</sup> Even though Ms. Buchanan has apparently made numerous extrajudicial statements, she took the extraordinary step of filing a motion for sanctions when defense counsel made comments to the press.<sup>141</sup> The particularly extreme sanctions request sought to have defense counsel imprisoned or suspended from practice before the federal courts.

The apparent selective nature of the charges and the manner in which the case has been prosecuted prompted Republican former Attorney General Richard Thornburgh to testify at the Subcommittee's joint hearing on behalf of Dr. Wecht.<sup>142</sup> Attorney General Thornburgh testified that "[w]e 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."<sup>143</sup>

Immediately after Attorney General Thornburgh's testimony, Ms. Buchanan filed a motion *in limine* to bar Dr. Wecht from arguing that selective prosecution tainted his indictment. Dr. Wecht's attorneys filed a motion for discovery on the selective prosecution allegations and asked for an evidentiary hearing on the matter. However, presiding Judge Arthur J. Schwab not only refused to grant a hearing on whether the prosecution was politically motivated, but he also forbade defense attorneys from even mentioning the subject at trial.<sup>144</sup>

Because Judge Schwab has denied discovery or a hearing on selective prosecution and the Department has not provided responsive documents to the Committee, there has been no way to finally determine whether politics improperly factored into the indictment. The course of the trial, however, only reinforced the concerns raised by Attorney General Thornburgh. In early April, after a two-month trial during which the prosecution presented over forty witnesses (the defense rested without putting on any evidence, arguing that the prosecution had not proved its case), and following ten days of deliberations, the jury announced that it was deadlocked and the presiding judge declared a mistrial. The prosecution immediately sought a re-trial, which was set for May

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<sup>140</sup> Defendant's Response to Motion for Sanctions (Doc. No. 477), U.S. vs. Wecht, June 15, 2007, at 2.

<sup>141</sup> Id. at 1.

<sup>142</sup> Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law.

<sup>143</sup> Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 10.

<sup>144</sup> Ward, *Wecht defense banned from talk of politics*, Pittsburgh Post-Gazette, Nov. 27, 2007.

27, while defense lawyers criticized the decision to immediately seek a re-trial without due deliberation and before the reasons for the hung jury had been assessed.<sup>145</sup>

Subsequently, a member of the jury revealed that “[t]he majority of the jury thought he was innocent,” and the Pittsburgh Post-Gazette editorialized that the case “added up to a big zero” and that it would be a “travesty” for the prosecution to continue and would “tarnish the integrity of the U.S. attorney’s office.”<sup>146</sup> Indeed, on learning that a retrial was planned, the jury foreman wondered if the prosecution had any additional evidence that the jury had not seen, and stated that “as the case went on, my thoughts were this was being politically driven.”<sup>147</sup> Other jurors apparently also had become concerned during trial that politics had played a role in the prosecution.<sup>148</sup> And local alarm was only further heightened by news that the prosecution had dispatched FBI agents to visit members of the jury.<sup>149</sup> Further demonstrating the bipartisan nature of public concern about the course of this prosecution, on April 16, 2008, a group of Republican and Democratic citizens of the Western District of Pennsylvania wrote to Attorney General Mukasey and U.S. Attorney Buchanan urging that the decision to retry Dr. Wecht be reconsidered.<sup>150</sup>

#### **D. Mississippi Supreme Court Justice Oliver Diaz, Judges Wes Teel and John Whitfield, and Trial Attorney Paul Minor**

In 2003, Mississippi attorney Paul Minor, Mississippi Supreme Court Justice Oliver Diaz, Justice Diaz’s former wife, Jennifer Diaz, and two other judges, Wes Teel and John Whitfield, were indicted based on allegations that Mr. Minor had attempted to bribe the judges, largely by guaranteeing their campaign loans.<sup>151</sup> Justice Diaz was acquitted of all charges, presumably at least in part because he had recused himself from cases involving Mr. Minor, a fact known to the prosecution before trial.<sup>152</sup> Mr. Minor was acquitted of most charges while the jury hung on

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<sup>145</sup> Silver, *Many questions surround Wecht retrial, set for May*, Pittsburgh Post-Gazette, April 9, 2008 .

<sup>146</sup> Editorial, *It’s Over*, Pittsburgh Post-Gazette, April 9, 2008; Cato, *Majority Thought Wecht was Innocent, Juror Says*, Pittsburgh Tribune Review, Apr. 9, 2008.

<sup>147</sup> Silver, *Some Jurors Skeptical of Case Against Wecht*, Pittsburgh Post Gazette, Apr. 10, 2008.

<sup>148</sup> Prine and Cato, *FBI’s Calls Upset Jurors in Wecht Trial*, Pittsburgh Tribune Review, Apr. 11, 2008.

<sup>149</sup> Id.

<sup>150</sup> Letter from Citizens of the Western District of Pennsylvania to Attorney General Michael Mukasey and Mary Beth Buchanan, U.S. Attorney for the Western District of Pennsylvania, April 16, 2008.

<sup>151</sup> Editorial, *Thunderous Charges End Months of Whispers*, The Sun Herald (Biloxi, MS), July 26, 2003.

<sup>152</sup> Horton, *Justice in Mississippi*, No Comment, Harper’s Magazine, Sept. 18, 2007.

others. On retrial, after the presiding judge revised his evidentiary rulings and relieved the prosecution of the need to prove certain elements of the alleged crime, Mr. Minor was convicted of what have been described as “vague” charges based on alleged efforts to obtain an unfair advantage from the two lower court judges, again through loan guarantees, and again despite the fact that Mississippi law allows such guarantees.<sup>153</sup>

Substantial questions have been raised regarding these prosecutions. For example, upon learning of the verdict, David Hampton, Editorial Director of the conservative Jackson Clarion Ledger wrote:

“I am still not sure what they did was illegal under the weak laws governing such activities, nor am I sure the government really proved its case. It did to the jury, so that's that, but I have my doubts as an observer. Didn't convince me. It is my opinion that there was too much of a political smell to this case. The extent the Republican Justice Department went to in going after a wealthy influential Democratic trial lawyer just seemed over the top. I've never seen anything like it. It was extraordinary. If we could only get that kind of effort from the U.S. attorney on some other serious crimes.”<sup>154</sup>

Other facts have raised concern that politics may have influenced these prosecutions. From 1996 to 2003, Paul Minor was a major contributor to the Democratic Party donating over a half-million dollars to Democratic Party candidates in local and national elections.<sup>155</sup> As a trial lawyer in the Mississippi Gulf area, Mr. Minor was one of a number of trial lawyers who represented plaintiffs in high-profile cases against major corporate interests.<sup>156</sup> Mississippi plaintiffs won lawsuits against corporations such as Bridgestone-Firestone, Ford Motor Company, and perhaps most importantly, the powerful tobacco companies, which netted Mr. Minor's firm substantial fees.<sup>157</sup> In fact, the recoveries in these cases were so large that, until 2003, of all contributions received by the Democratic Party in Mississippi, half were from Mississippi trial

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<sup>153</sup> Cohen, *The United States Attorneys Scandal Comes to Mississippi*, New York Times, Oct. 11, 2007. See also Letter from Judge John Whitfield to Chairman John Conyers, Jr., July 23, 2007; Letter from Paul Minor to Chairman John Conyers, Jr., Oct. 22, 2007; Letter from Justice Oliver Diaz to Chairman Conyers and Ranking Member Smith on Oct. 22, 2007.

<sup>154</sup> Hampton, *Minor Case*, The Clarion Ledger Blog, Sept. 7, 2007, *available at* [http://www.clarionledger.com/misc/blogs/dhampton/2007/09/minor\\_case.html](http://www.clarionledger.com/misc/blogs/dhampton/2007/09/minor_case.html).

<sup>155</sup> Letter from Paul Minor to the H. Comm. on the Judiciary, Oct. 22, 2007.

<sup>156</sup> Id.

<sup>157</sup> Id.

attorneys and approximately one-third of that funding came from Paul Minor.<sup>158</sup> Convicting and imprisoning Paul Minor on corruption charges could be a powerful way to curtail contributions to the local Democratic Party.

Other concerns, besides the possible defunding of Mississippi Democrats by intimidating possible donors such as the trial bar, have been raised about the prosecution.<sup>159</sup> The indictment was announced just 90 days before the Gubernatorial election between Democratic Governor Ronnie Musgrove and Republican challenger Haley Barbour, in which issues of alleged Democratic “corruption” were prominent.<sup>160</sup> Some have questioned whether U.S. Attorney Dunn Lampton who led the prosecution was appropriately impartial, as Justice Diaz had defeated a friend of Mr. Lampton in election to the Supreme Court and Mr. Minor had won a large judgment in a lawsuit against a company owned by Mr. Lampton’s family.<sup>161</sup> But fundamentally, the biggest question raised is whether commonplace and widely-practiced campaign funding behaviors were selectively prosecuted against political opponents of one party, such as Mr. Minor and Justice Diaz, but were not prosecuted against individuals or organizations favored by the other party.

While Mr. Minor was indicted by U.S. Attorney Lampton for making or guaranteeing loans to Mississippi judges including Justice Diaz, another prominent Mississippi trial lawyer alleged to have engaged in virtually the same conduct, Richard Scruggs, was not. Mr. Scruggs, however, has been reported to have supported Republican candidates in other elections and is the brother-in-law of Senator Trent Lott.<sup>162</sup> Indeed, Senator Lott himself acknowledged speaking to prosecutors about the case, stating that Mr. Scruggs had nothing to worry about regarding an investigation of connections between Mississippi judges and lawyers and that the investigation

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<sup>158</sup> Id.

<sup>159</sup> Cohen, *The United States Attorneys Scandal Comes to Mississippi*, New York Times, Oct. 11, 2007; Defendant Paul S. Minor’s motion to Dismiss the Indictment; U.S. v. Paul S. Minor, et al, 3:03CR120WS, S.D. Miss., Jan. 12, 2004, at 9.

<sup>160</sup> Horton, *A Minor Injustice*, No Comment, Harper’s Magazine, Oct. 5, 2007

<sup>161</sup> Horton, *Justice in Mississippi*, No Comment, Harper’s Magazine, Sept. 18, 2007; Defendant Paul S. Minor’s motion to Dismiss the Indictment; U.S. v. Paul S. Minor, et al, 3:03CR120WS, S.D. Miss., Jan. 12, 2004, at 9.

<sup>162</sup> Liptak, *Not from A Grisham Novel, But One for the Casebooks*, New York Times, Mar. 15, 2004; Horton, *Justice in Mississippi*, No Comment, Harper’s Magazine, Sept. 18, 2007. Indeed, ultimately, a different U.S. Attorney did indict Mr. Scruggs for attempting to bribe a Mississippi judge, which arguably raises further questions about the evenhandedness of the decisionmaking in the set of cases involving Mr. Minor and Justice Diaz. See Treaster, *Lawyer Battling for Katrina Payments Is Indicted*, New York Times, Nov. 29, 2007.

was focusing on “‘a particular judge’ and ‘a particular lawyer’.”<sup>163</sup> Likewise, it has been asserted that other judges on the Mississippi Supreme Court may have had similar loan arrangements to those challenged between Mr. Minor and Justice Diaz, but those more conservative judges were neither investigated nor indicted.<sup>164</sup>

In addition, Justice Diaz never heard any cases involving Mr. Minor’s clients nor did he vote on any cases involving Mr. Minor.<sup>165</sup> On those facts, the decision to indict Justice Diaz appears questionable at best, as confirmed by his acquittal. In fact, upon Justice Diaz’ acquittal of the corruption charges, Dunn Lampton was quoted as saying: “I knew we would have a problem on [prosecuting] Diaz because he didn’t vote on anything.”<sup>166</sup> Regardless, U.S. Attorney Lampton appears to remain undeterred in his pursuit of a federal conviction of Justice Diaz. Three days after the acquittal, Mr. Lampton announced a second federal indictment of Justice Diaz, this time claiming that the campaign loans amounted to personal income that Justice Diaz had not properly reported.<sup>167</sup> Justice Diaz was acquitted of that charge as well, after the jury deliberated on fifteen minutes.<sup>168</sup> And in current comments, Mr. Lampton has hinted at yet more to come: “There are other things I am aware of regarding Justice Diaz that caused me to refrain from commenting further on [the weakness of the prior cases], but it will come out later, and you’ll see. . . . I believe there was sufficient evidence to convict him, but maybe not for what he was charged.”<sup>169</sup>

In a letter to Chairman Conyers and Ranking Member Smith before the Joint Subcommittee hearing, Justice Diaz – who still sits on the Mississippi Supreme Court – summed up his view of the matter: “As a result of political persecution, three innocent men . . . have been

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<sup>163</sup> Musgrave & Wilemon, *Lott asked investigators about Scruggs; Senator had denied talking with Justice Department*, The Sun Herald (Biloxi, MS), May 31, 2003; Defendant Paul S. Minor’s motion to Dismiss the Indictment; *U.S. v. Paul S. Minor, et. al.*, 3:03CR120WS, United States District Court, Southern District of Mississippi, Jackson Division; filed Jan. 12, 2004; p 17.

<sup>164</sup> Cohen, *The United States Attorneys Scandal Comes to Mississippi*, New York Times, Oct. 11, 2007; Alexandrovna, *Mississippi Justice: Bush US Attorney Targeted My Wife, Supporters and Friends*, Raw Story, April 9, 2008.

<sup>165</sup> Letter from Justice Oliver Diaz to Chairman John Conyers, Jr. and Ranking Member Lamar S. Smith, Oct. 22, 2007.

<sup>166</sup> Goodman, *Jury Clears Diaz*, The Clarion-Ledger, Aug. 13, 2005.

<sup>167</sup> Alexandrovna, *Mississippi Justice: Bush US Attorney Targeted My Wife, Supporters and Friends*, Raw Story, April 9, 2008.

<sup>168</sup> Goodman, *Jury Clears Diaz*, The Clarion-Ledger, Aug. 13, 2005; Alexandrovna, *Mississippi Justice: Bush US Attorney Targeted My Wife, Supporters and Friends*, Raw Story, April 9, 2008;

<sup>169</sup> Lynch, *Dem At Your Own Risk*, Jackson Free Press, Nov. 7, 2007.

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.”<sup>170</sup>

**E. Other Cases Reported to Committee Staff**

***i. New Jersey Senator Robert Menendez***

In September 2006, the office of New Jersey U.S. Attorney (and former Bush “Pioneer”) Christopher Christie issued two grand jury subpoenas in an apparent investigation of Senator Robert Menendez.<sup>171</sup> News of these subpoenas was leaked and the matter became an issue in the final two months of Senator Menendez’ reelection campaign.<sup>172</sup> A pre-election column in the New York Observer, for example, stated: “Most recently, [the U.S. Attorney] went crashing into the Democratic Party’s plan to take over the U.S. Senate by announcing an investigation – 61 days before voters go to the polls – into a nonprofit agency connected to Mr. Menendez.”<sup>173</sup>

The investigation, which involved an office lease deal entered into in 1993, never led to any charges, but no clearing statement has been issued by the U.S. Attorney. Based on the timing of the subpoenas and the pre-election leak of their service by “law enforcement” sources, Senator Menendez raised concern that the matter was designed to have a political impact on the approaching Senate race: “Suddenly 61 days before an election a prosecutor appointed by George Bush decides to take an interest, and not coincidentally, leaks to the press follow immediately. There are serious questions about the timing of this inquiry and I will not allow an orchestrated concerted effort to smear and personally destroy those who oppose this administration.”<sup>174</sup>

***ii. Carl Marlinga, County Prosecutor and Congressional Candidate from Michigan***

Carl Marlinga served for 20 years as the elected prosecutor for Macomb County, Michigan

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<sup>170</sup> Letter from Justice Oliver Diaz to Chairman John Conyers, Jr. and Ranking Member Lamar S. Smith, October 22, 2007.

<sup>171</sup> Esposito, *To the Victors Go the Subpoenas*, ABC News The Blotter, Nov. 10, 2006; Krugman, *Department of Injustice*, New York Times, Nov. 9, 2007.

<sup>172</sup> Kapochunas, *Menendez Has Smallest of Leads Heading Into Final Days*, New York Times, Nov. 2, 2006; Kocieniweski, *Grand Jury Hears Testimony On Menendez’s Lease Deal*, New York Times, Dec. 9, 2006; Esposito, *Feds in New Jersey Serve Subpoenas on Senator’s Associates*, ABC News The Blotter, Nov. 16, 2006.

<sup>173</sup> Horowitz, *Prosecutor Makes a Meal of N.J. Senate Race*, New York Observer, Oct. 16, 2006.

<sup>174</sup> Hart, *Cold Case*, The American Prospect, Sept. 13, 2006.

before mounting an unsuccessful congressional bid in 2002. After that race, the local U.S. Attorney, Stephen Murphy, launched a criminal investigation of Mr. Marlinga that forced him to drop out of the 2004 race for his old position as state prosecutor. The investigation led to very unusual charges that Mr. Marlinga improperly asked the Michigan courts to reopen an old case in return for an \$8,000 campaign contribution from the employer of the sister of the convicted man.<sup>175</sup> Mr. Marlinga was also accused of accepting \$26,000 in campaign donations from the defendant in another rape case who allegedly funneled the donations through other people in violation of campaign finance rules. Mr. Marlinga was acquitted of all charges and, according to newspaper accounts, after his acquittal members of the jury offered to take him to dinner by way of apology for a case that the jury believed never should have been brought.<sup>176</sup>

As the U.S. Attorney firing controversy unfolded, Mr. Marlinga questioned whether politics had played some role in the decision to charge him with these crimes: “Was there some extra pressure on the United States attorney’s office, whether articulated or tacitly understood, by their superiors in Washington who would not look favorably upon the office if this case was not pursued?” Mr. Marlinga asked. “I have to wonder.”<sup>177</sup> Reporters also raised questions about U.S. Attorney Murphy’s charging patterns: “In Eastern Michigan since 2001, at least 21 Democratic public officials have been charged or linked to corruption inquiries, including the governor, the mayor of Detroit and several local officials, including Mr. Marlinga. Officials at the United States attorney’s office in Detroit identified one Republican who had been charged and said they did not have a list by party that would allow them to identify others.”<sup>178</sup>

### *iii. Pennsylvania State Senator Vince Fumo*

Mr. Fumo, one of the most powerful and influential Democrats in the Commonwealth of Pennsylvania, has alleged that his prosecution by U.S. Attorney Patrick Meehan was motivated by improper political considerations. According to a memorandum submitted to Chairman Conyers and Subcommittee Chair Sánchez by Mr. Fumo’s counsel, U.S. Attorney Meehan “is a long time

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<sup>175</sup> Ashenfelter, *County Prosecutor Marlinga is Charged in Rape-Case Payoffs*, Detroit Free Press, Apr. 23, 2004.

<sup>176</sup> Lipton, *Some Ask if U.S. Attorney Dismissals Point to Pattern of Investigating Democrats*, New York Times, May 1, 2007; Hunt & Ashenfelter, *Marlinga Acquitted*, Detroit Free Press, Sept. 28, 2006.

<sup>177</sup> Lipton, *Some Ask if U.S. Attorney Dismissals Point to Pattern of Investigating Democrats*, New York Times, May 1, 2007.

<sup>178</sup> *Id.* In addition to the Marlinga matter, the Committee has received a complaint about selective prosecution in another Michigan case, involving former Democratic gubernatorial candidate Geoffrey Fieger. *See* Letter from Alan M. Derschowitz, Counsel for Geoffrey Fieger, to Chairman John Conyers, Jr., Oct. 22, 2007.

Republican operative, who personifies the term ‘loyal Bushie.’”<sup>179</sup> This memorandum argues that U.S. Attorney Meehan pursued Mr. Fumo and other state Democrats while ignoring “clear evidence of more egregious misconduct by Republicans.”<sup>180</sup> Mr. Fumo also asserts that the arrests of two of his staffers raised additional questions of whether these actions were timed to boost Senator Rick Santorum’s reelection campaign.<sup>181</sup> Mr. Fumo is set to go to trial in September on a 139-count indictment charging him with defrauding taxpayers and two nonprofit organizations, and with attempting a coverup to obstruct the FBI investigation.<sup>182</sup>

*iv. Georgia State Senator Charles Walker*

Mr. Walker, a Democrat, was elected to the Georgia Senate in 1990 and, in 1996, became the first African-American Senate Majority Leader in Georgia history. On June 3, 2005, Mr. Walker was convicted of 127 counts of conspiracy, mail fraud, and filing false charity tax returns.<sup>183</sup> Mr. Walker claimed that the case against him was politically motivated because he was considered a potential contender for governor and was one of the most powerful Democrats in state politics.<sup>184</sup> Mr. Walker had previously defeated Republican Governor Sonny Perdue in a race to become the Senate Majority Leader and was particularly visible in his efforts to prevent Governor Perdue from flying the confederate flag over the Georgia State Capitol.<sup>185</sup> U.S. Attorney Richard Thompson, a friend of Governor Perdue, then began investigating a number of prominent Democrats, including Mr. Walker. After an Office of Professional Responsibility investigation revealed that U.S. Attorney Thompson had abused his office and that the initiation of the

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<sup>179</sup> Memorandum from Sprague & Sprague to Chairman John Conyers and Chair Linda Sánchez, Oct. 8, 2007.

<sup>180</sup> Id.

<sup>181</sup> Id.

<sup>182</sup> McCoy, *Fumo Will Quit Race, Sources Say*, The Philadelphia Inquirer, March 12, 2008, available at [http://www.philly.com/inquirer/special/fumo/20080312\\_Fumo\\_will\\_quit\\_race\\_\\_sources\\_say.html](http://www.philly.com/inquirer/special/fumo/20080312_Fumo_will_quit_race__sources_say.html)

<sup>183</sup> Hudson & Cooper, *Jury Convicts on 127 of 137 Counts*, Augusta Chronicle, June 3, 2005, available at [http://chronicle.augusta.com/stories/060405/met\\_4321851.shtml](http://chronicle.augusta.com/stories/060405/met_4321851.shtml).

<sup>184</sup> Holahan, *Walker Verdict Changes Politics*, Augusta Chronicle, June 5, 2005, available at [http://chronicle.augusta.com/stories/060505/met\\_4327404.shtml](http://chronicle.augusta.com/stories/060505/met_4327404.shtml).

<sup>185</sup> Letter from Nathan Dershowitz to Chairman John Conyers, Jr., Oct. 22, 2007.

investigations was not consistent with Justice Department standards, he resigned.<sup>186</sup> However, the investigation of Mr. Walker continued.<sup>187</sup>

#### IV. Conclusion

Because of the Department's limited and inadequate cooperation with the investigation, key facts remain unknown about the serious allegations of politicized justice raised in this report. One thing seems clear: Department leadership, both current and former, has not responsibly addressed the issues raised by the matters described in this report. In the face of sworn testimony that politics has intruded upon prosecution decisions, despite an appeals court ruling that a politically-sensitive prosecution was brought on evidence that was "beyond thin" and legal theories that were "preposterous," and even after reported statements by a U.S. Attorney that he brought a politically-charged matter against a sitting state Supreme Court justice even though he doubted there was evidence to convict, no internal investigation or supervisory review appears to have been commenced. Indeed, the Department appears to have simply circled its wagons and refused to cooperate with Congressional oversight.

Such conduct would be irresponsible at any point. In the wake of the damage to the Department's credibility caused by the U.S. Attorney firings and related matters, it seems particularly short-sighted and harmful. Former Deputy Attorney General James Comey understood the stakes, testifying last year that, for the Department to do its job, it must be seen and respected as an apolitical "other" in American life "so it can serve all Americans."<sup>188</sup> Even more directly, Mr. Comey explained that Department lawyers must "be seen as the good guys, and not as either this administration or that administration."<sup>189</sup> When that reputation for fairness and impartiality is squandered, according to Mr. Comey, "a whole lot of time and a whole lot of good work will be necessary to heal that kind of wound."<sup>190</sup>

Unfortunately, Department leadership has refused to do that work and the damage is thus ongoing. As a consequence, whenever a politically sensitive prosecution is brought, questions about the integrity and impartiality of the Department's work are now inevitable.<sup>191</sup> An honest

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<sup>186</sup> Id.

<sup>187</sup> Id.

<sup>188</sup> Comey, May 3, 2007, Subcomm. on Commercial and Admin. Law, Hearing at 17-18.

<sup>189</sup> Id.

<sup>190</sup> Id. at 41.

<sup>191</sup> See, e.g., Horton, *Spitz Out: Was the Investigation of Eliot Spitzer Politically Motivated?*, The New Republic, Mar. 12, 2008; Hakim and Santos, *G.O.P. Consultant Says He Reported Spitzer Trysts in 2007*, New York

and complete accounting of the issues raised by the allegations discussed in this report is thus a necessary step towards the restoration of the Department's hard-won, but easily-lost, reputation.

This should include a thorough and fair review by the Executive Branch and real cooperation from the Department and persons with relevant knowledge with congressional oversight.

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Times, Mar. 24, 2008.