

U.W. Clemon

Birmingham, AL

May 13, 2009

Attorney General Eric H. Holder, Jr.
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Re: Investigation of Justice Department Prosecution
of former Alabama Governor Don Siegelman

Dear General Holder:

I write this letter as a private citizen.

For the nearly thirty years preceding my retirement on January 31, 2009, I was a United States District Judge of the Northern District of Alabama, serving as its chief judge between 1999-2006. During that time, I tried numerous criminal cases in the all three federal district courts in Alabama and in the Middle and Southern districts of Florida.

In 2004, the case of *United States v. Phillip Kelly Bobo, Don Eugene Siegelman, and Paul Michael Hamrick*, Case No. 7:04-cr-200 (N.D. Ala.) ("*Bobo I*") was filed in the Northern District of Alabama. The case had an unusual twist because of its earlier iteration,¹ and Mr. Siegelman's campaign seeking another term as governor in 2005. The Defendants were jointly charged with 1) conspiring to cause the Alabama Medicaid Agency and Finance Department to award medicaid contracts to Dr. Bobo's company, 2) health care fraud, and 3) theft from a federally funded program. Dr. Bobo was charged with five additional crimes, of which a jury ultimately found him not guilty.

¹In *United States v. Bobo*, Case No. 7-01-cr-171 (N.D. Ala.) ("*Bobo I*"), the Eleventh Circuit reversed the conviction of Dr. Bobo, writing that his motion to dismiss the defective indictment should have been granted; and that, in any event, it "seriously question[ed] whether the evidence presented was sufficient to support the convictions." *United States v. Bobo*, 333 F.3d 1076, 1085, n.9 (11th Cir. 2003). The Assistant United States Attorney ("AUSA") in charge of the case readily admitted that except for the addition of Don Siegelman and Paul Michael Hamrick as defendants, *Bobo II* was essentially a re-play of *Bobo I*.

In my view, the United States Attorney's office undertook considerable judge-shopping in *Bobo II*. After three other judges had disqualified themselves, our court's random case assignment system resulted in my assignment to the case. I granted the Government's motion to disqualify Mr. Siegelman's original counsel and denied Dr. Bobo's double jeopardy motion. Nonetheless, the United States Attorney, with the approval of the Department of Justice, made a baseless and futile effort to have me disqualified by the Eleventh Circuit.

Two of the AUSAs rather blatantly attempted to poison the jury pool. After the Defendants moved that any alleged F.R.Civ.P 404(b) materials be filed under seal, and with full knowledge that the motion was under submission, the AUSAs on the very next business day filed the materials as a matter of public record. The predictable poisonous publicity ensued. Although both AUSAs were subsequently sanctioned, the success of their efforts necessitated my decision to sequester the jury.

The testimony of the witnesses called by the Government at the *James*² conspiracy hearing conclusively established that there was absolutely no basis for a conspiracy charge.³ When I granted the Defendants' motion to dismiss the conspiracy count, the AUSA forthwith moved to dismiss the remaining case against Mr. Siegelman and Mr. Hamrick. The motion was granted, and the case was dismissed with prejudice against those Defendants.

The 2004 prosecution of Mr. Siegelman in the Northern District of Alabama was the most unfounded criminal case over which I presided in my entire judicial career. In my judgment, his prosecution was completely without legal merit; and it could not have been accomplished without the approval of the Department of Justice.

I have no personal knowledge of the facts and circumstances surrounding Mr. Siegelman's subsequent prosecution and conviction in the Middle District of Alabama. But

²*United States v. James*, 590 F.2d 575 (5th Cir.1979).

³One of the key Government witnesses was Nick Bailey. Under my direct questioning, Mr. Bailey testified:

THE COURT: All right, Mr. Bailey, do you have any knowledge that either the Defendant Siegelman or the Defendant Hamrick knowingly became members of a conspiracy, an unlawful conspiracy of any kind?

THE WITNESS:
No, sir.

given my experience with his unwarranted prosecution in the Northern District, and in the interest of ensuring that Justice Department cases are handled fairly and consistent with its commitment to justice, I strongly support a thorough investigation by your office of allegations of prosecutorial misconduct in Mr. Siegelman's prosecution in the Middle District.

Very truly yours,

U.W. Clemon

cc: Lanny A. Bruer, Assistant Attorney General
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