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January 10, 2011

Hon. John Ley, Clerk
U.S. Court of Appeals
56 Forysth St. NW
Atlanta GA 30303

Re: *United States v. Siegelman*, No. 07-13163 (set for argument on January 19)

Dear Mr. Ley:

Appellant Siegelman respectfully submits this Rule 28(j) letter regarding *United States v. Dean* (attached), decided by the D.C. Circuit on January 7. While the facts of *Dean* were different from this case, at least two aspects of *Dean* support reversal.

First, *Dean* confirms that “bribery,” in the sense most often used in discussion of federal criminal law, is premised on *personal benefit* to the public official. Slip Op. at 5 (“[T]he Supreme Court has also indicated that a *quid pro quo* necessitates an *agreement* between the public official and the other party that the official will perform an official act in return for a personal benefit to the official.”); *id.* at 6 (repeatedly emphasizing the absence of evidence of an agreement that money would go to Ms. Dean “personally” and not to the entity for which she worked); *id.* at 7. While *Dean* did not involve campaign contributions (or referendum contributions, the subject of our case), this discussion of bribery as personal benefit strengthens the points that Governor Siegelman has made in this regard.

Second, the Court in *Dean* recognized that the government was attempting to read far too much into a short passage from *Evans v. United States*, 504 U.S. 255 (1992). This is an error that the government has also committed in this case, and an error that the original panel opinion shared.

Also misplaced is the government’s reliance on the Supreme Court’s statement in *Evans* that the *quid pro quo* requirement is satisfied where it is established that “a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts.” 504 U.S. at 268. The question in *Evans* was “whether an affirmative act of inducement by a public official, such as a demand, is an element of the offense of extortion” prohibited by 18 U.S.C. § 1951. *Id.* at 256. The statement relied upon by the government was nothing more than an answer by the Court to that question. *Id.* at 268.

Slip Op. at 7 (emphasis supplied).

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'S. Heldman', with a long horizontal flourish extending to the right.

Sam Heldman

cc (by email): John-Alex Romano
Louis Franklin
James Jenkins
Bruce Rogow