

February 27, 2008

Michael B. Mukasey
United States Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: United States of America vs. Don E. Siegelman, et al.
In the United States District Court for the Middle District of Alabama
Criminal No. 2:05-cr-119-MEF

Dear General Mukasey:

I am lead counsel for Governor Don E. Siegelman who is presently serving an 88 month sentence in Oakdale Federal Penitentiary near Alexandria, Louisiana. I am extremely troubled by the events surrounding the investigation, prosecution, conviction, and sentencing of my client. It appears that Governor Siegelman, a Democrat, was targeted for investigation by the Department of Justice while his Republican counterparts were not, even though the same witness that the Department of Justice relied upon in prosecuting Governor Siegelman provided similar evidence against others. I am not suggesting that any of these other highly respected public officials committed any crimes. I do, however, have grave concerns about a Department of Justice that concludes a witness is credible when providing evidence against Governor Siegelman, but not credible when providing similar evidence against Republicans.

Members of Congress share my concern. During your Senate Confirmation Hearings, you were asked certain questions regarding your views on the politicalization of the Justice Department in criminal matters. You strongly indicated that such politicalization has no place in the Justice System and that your office would look into such matters. Senator Charles E. Schumer of New York asked you

specifically about my client's case, and you assured him and other members of the Senate that you would look into the peculiarities of this case but that you felt it would be inappropriate to do so while these issues are on appeal. The matters that I set forth below are *not* the subject of this appeal and, as such, should *not* delay your investigation. Accordingly, I respectfully request your immediate attention.

Under Justice Department regulations, the Attorney General is required to appoint an outside special counsel if three criteria are met. These criteria are:

1. A criminal investigation of a person or matter is warranted.
2. The investigation or prosecution of that person or matter by a United States Attorney's Office or litigating Division of the Department of Justice would present a conflict of interest for the Department, and
3. It would be in the public interest to appoint an outside Special Counsel to assume responsibility for the matter.

The *Siegelman* case more than meets these criteria. In a *60 Minutes* story aired Sunday, February 24, 2007, it was reported that Nick Bailey, the principle witness on whose testimony my client's conviction was based and who is currently serving an 18 month sentence for his own crimes, spoke to prosecutors more than 70 times and went through practice question and answer sessions in an obvious attempt to improperly coach his story. In fact, *60 Minutes* further reported that the prosecutors were so frustrated they made Bailey write his proposed testimony over and over so that he could get his story straight.

If true, the *60 Minutes* description of what was done to fashion Bailey's testimony into a story that could be believed by a jury could not meet any fair minded person's description of Due Process. Despite the trial court's mandate that all material that would be relevant to this case be turned over to defense counsel and despite the written policies of the U.S. attorney's office in Montgomery that such material voluntarily be turned over, no such material was given to the defense. During the trial, the defense renewed its request for any and all Brady/Jenks material. Again, the trial court ordered the prosecutors to review *all* Government files and produce any previously unproduced materials. We were again assured that all such materials had already been produced to us.

The Brady/Jenks material, as you know, not only covers material in the U.S. Attorney's Office but any material in possession of the United States of America, particularly the Justice Department, and its Public Integrity Division at all of its locations, including Washington D.C. Since Bailey's credibility was the key factor in Governor Siegelman's conviction, the ability to cross examine him on such materials would have been critical to the defense. Any witness who needs more than 70 meetings and written question and answer sessions to tell the "truth" is highly suspect. Scripts have no place in criminal trials. If the described coaching took place the defendants could have, armed with such evidence, proven that the order of magnitude of the coaching created a reasonable doubt. Such evidence would, in my opinion, resulted in acquittal.

Given the seriousness of this matter, both to my client and to the American Justice System, the fact that the 11th Circuit will not be called upon to address these matters in the appeal as currently structured, the fact that you made a commitment to the Senate and the American People that you would restore honesty and integrity to the Justice Department, the fact that several respected and credible news organizations have raised serious concerns about this prosecution, and the fact that 52 former Attorneys General have raised the same concerns, including, Grant Woods, a respected Republican former State Attorney General, merits the appointment of Special Counsel to fully investigate this matter.

Therefore, on behalf of Governor Siegelman, I respectfully request appointment of Special Counsel to fully investigate both the origins and conduct of this prosecution.

With best regards, I remain

Sincerely yours,



VINCENT F. KILBORN, III