House Calendar No. 263

110TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
110–847

RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND KARL ROVE IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY WITH A SUBPOENA DULY ISSUED BY THE COMMITTEE ON THE JUDICIARY

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

together with

ADDITIONAL VIEWS AND MINORITY VIEWS

SEPTEMBER 15, 2008.—Referred to the House Calendar and ordered to be printed

House Calendar No. 263

110TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 110–847

RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND KARL ROVE IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY WITH A SUBPOENA DULY ISSUED BY THE COMMITTEE ON THE JUDICIARY

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

together with

ADDITIONAL VIEWS AND MINORITY VIEWS

SEPTEMBER 15, 2008.—Referred to the House Calendar and ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

69–006 WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

110TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 110–847

RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND KARL ROVE IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY WITH A SUBPOENA DULY ISSUED BY THE COMMITTEE ON THE JUDICIARY

SEPTEMBER 15, 2008.—Referred to the House Calendar and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS AND MINORITY VIEWS

[Including Committee Cost Estimate]

The Committee on the Judiciary, having considered this Report, reports favorably thereon and recommends that the Report be approved.

The form of Resolution that the Committee on the Judiciary would recommend to the House of Representatives for citing former White House Adviser Karl Rove for contempt of Congress pursuant to this Report is as follows:

Resolved, That former White House Adviser Karl Rove is in contempt of Congress for failure to comply with the subpoena issued to him on May 22, 2008; and it is further

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House of Representatives shall certify the Report of the Committee on the Judiciary, detailing the refusal of former White House Adviser Karl Rove to appear before the Subcommittee on Commercial and Administrative Law as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Rove be proceeded against in the manner and form provided by law; and it is further

Resolved, That the House of Representatives should pursue enforcing the subpoena through other legal remedies as appropriate.

BACKGROUND AND EXPLANATION

I. BACKGROUND OF COMMITTEE INVESTIGATION AND REQUESTS FOR INFORMATION FROM KARL ROVE

A. House Judiciary Committee Hearings

Beginning in March 2007, the House Judiciary Committee and its Subcommittee on Commercial and Administrative Law (CAL Subcommittee) have held a number of hearings on the alleged politicization of the Justice Department, including the termination of U.S. Attorneys in 2006, allegations of selective prosecution, and related issues. These have included:

U.S. Attorneys & William Moschella. On March 6, 2007, six of the terminated U.S. Attorneys[1] and William E. Moschella, Principal Associate Deputy Attorney General, U.S. Department of Justice, among others, testified before the CAL Subcommittee.[2] At this hearing (and in private briefings on February 28 and March 5 to CAL Subcommittee members and staff that preceded it), Mr. Moschella testified, *inter alia*, as to the Justice Department's then-claimed reasons for firing these U.S. Attorneys. The terminated U.S. Attorneys testified, *inter alia*, that they had not been given reasons for their firing and, among other matters, responded to some of the Department's asserted reasons for their firing, and discussed potentially improper political and other factors that may have been related to their firing.

Ensuring Executive Branch Accountability. On March 29, 2007, the CAL Subcommittee heard testimony assessing the validity of White House assertions concerning executive privilege in the U.S. Attorney controversy.[3] Beth Nolan, former White House Counsel under President Clinton, indicated that she had testified four times before congressional committees on matters directly related to her White House duties, including three times while she was serving in that position.[4]

James Comey. On May 3, 2007, former Deputy Attorney General James Comey testified before the CAL Subcommittee.[5]

Alberto Gonzales. On May 10, 2007, Attorney General Gonzales appeared before the full Judiciary Committee for an oversight hearing that focused on the U.S. Attorneys controversy.[6]

---

[1] *H.R. 580, Restoring Checks and Balances in the Confirmation Process of U.S. Attorneys: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary,* 110th Cong. (2007). The six former U.S. Attorneys who testified were Ms. Lam, Mr. Iglesias, Mr. Cummins, Mr. McKay, Mr. Bogden, and Mr. Charlton.

[2] The other witnesses included the following: Representative Darrell E. Issa (R-CA); former Representative Asa Hutchinson (R-AR); John A. Smietanka, a former United States Attorney for the Western District of Michigan; George J. Terwilliger, III, former Deputy Attorney General of the U.S. Department of Justice; T.J. Halstead, Legislative Attorney, American Law Division, Congressional Research Service; and Atlee W. Wampler, III, President of the National Association of Former United States Attorneys.

[3] *Ensuring Executive Branch Accountability: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary,* 110th Cong. (2007). The witnesses at the hearing included John Podesta, former White House Chief of Staff to President Bill Clinton; Beth Nolan, former White House Counsel to President Bill Clinton; Frederick A.O. Schwarz, Jr., Senior Counsel, Brennan Center for Justice; and Noel J. Francisco, former Associate Counsel to President George W. Bush.

[4] *Id.* (testimony of Beth Nolan, former White House Counsel to President Bill Clinton).

[5] *Continuing Investigation into the U.S. Attorneys Controversy: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary,*110th Cong. (2007) (testimony of James Comey, former Deputy Attorney General).

[6] *United States Department of Justice: Hearing Before the H. Comm. on the Judiciary,* 110th Cong. (2007) (testimony of Attorney General Alberto Gonzales).

Monica Goodling. After a grant of limited use immunity, Monica Goodling, former Senior Counsel to Attorney General Alberto Gonzales and the Department's White House Liaison, appeared before the full Committee on May 23, 2007.[7]

Paul McNulty. On June 21, 2007, Deputy Attorney General Paul McNulty testified before the CAL Subcommittee.[8]

Harriet Miers. Former White House Counsel Harriet Miers refused to comply with a subpoena requiring her appearance before the CAL Subcommittee on July 12, 2007.[9] Ms. Miers not only failed to provide testimony or documents; she failed even to appear for the hearing. CAL Subcommittee Chair Linda Sánchez proceeded to overrule the White House's claims of immunity and privilege with respect to Ms. Miers, and the ruling was sustained by CAL Subcommittee Members in a recorded vote of 7-5.[10]

Allegations of Selective Prosecution: The Erosion of Public Confidence in our Federal Justice System. On October 23, 2007, the Subcommittee on Crime, Terrorism, and Homeland Security and the CAL Subcommittee held a joint hearing exploring several cases of alleged selective prosecution, including the prosecutions of former Democratic Alabama Governor Don Siegelman, Wisconsin state employee Georgia Thompson, and prominent Democrat Cyril Wecht in Pittsburgh. Testimony was received from former Attorney General Richard Thornburgh, Professor Donald C. Shields, and former Alabama U.S. Attorney Doug Jones.[11] Part II of the hearing was held on May 14, 2008, at which testimony was received from the Hon. Paul W. Hodes (D-N.H.), consultant Allen Raymond, Attorney Paul Twomey, and Professor Mark C. Miller.[12]

Karl Rove. Former White House Deputy Chief of Staff Karl Rove refused to comply with a subpoena requiring his appearance before the CAL Subcommittee on July 10, 2008, failing to appear for the hearing to answer questions.[13] CAL Subcommittee Chair Sánchez proceeded to overrule the claims of immunity and privilege with re-

---

[7] *Continuing Investigation into the U.S. Attorneys Controversy and Related Matters: Hearing Before the H. Comm. on the Judiciary,* 110th Cong. (2007) (testimony of Monica Goodling, former Senior Counsel to Attorney General Alberto Gonzales and White House Liaison, U.S. Department of Justice).

[8] *Continuing Investigation into the U.S. Attorneys Controversy and Related Matters: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary,* 110th Cong. (2007) (testimony of Paul McNulty, Deputy Attorney General).

[9] *Continuing Investigation into the U.S. Attorneys Controversy and Related Matters: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary,* 110th Cong. (2007).

[10] *Id.* On July 25, 2007, the Committee met in open session and adopted a resolution "recommending that the House of Representatives find that former White House Counsel Harriet Miers and White House Chief of Staff Joshua Bolten be cited for contempt of Congress for refusal to comply with subpoenas issued by the Committee." The Committee voted 22-17 to report a resolution recommending finding them in contempt to the full House. On February 14, 2008, the House voted 223-32 to hold Ms. Miers and Mr. Bolten in contempt of Congress and to grant the Chairman of the Committee the power to file a civil suit to seek declaratory and injunctive relief for the failure to comply with the subpoenas. Attorney General Michael Mukasey declined to refer the contempt citations to a grand jury, and the Chairman of the Committee initiated a lawsuit in the U.S. District Court for the District of Columbia. That case is currently pending.

[11] *Allegations of Selective Prosecution: The Erosion of Public Confidence in our Federal Justice System: Joint Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security and the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary,* 110th Cong. (2007).

[12] *Allegations of Selective Prosecution Part II: The Erosion of Public Confidence in our Federal Justice System: Joint Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security and the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary,* 110th Cong. (2008).

[13] *The Politicization of the Justice Department and Allegations of Selective Prosecution: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2008).

spect to Mr. Rove, and the ruling was sustained by CAL Subcommittee Members in a recorded vote of 7-1.[14]

B. Requests for Information from the White House and Subpoena Issued to Karl Rove

Because Mr. Rove was considered a central witness who could provide information that is unavailable through any other source, in March 2007 Chairman John Conyers, Jr. and CAL Subcommittee Chair Linda Sánchez sought Mr. Rove's voluntary compliance with the Committee's investigation, along with that of other witnesses, by letter to White House Counsel Fred Fielding.[15]

In response, Mr. Fielding explained that he was prepared to make Mr. Rove and other White House officials available for interviews with the House and Senate Judiciary Committees on a joint basis; but his offer was conditioned on various preconditions and scope restrictions.[16] Mr. Fielding's offer required that the interviews be confined to "the subject of (a) communications between the White House and persons outside the White House concerning the request for resignations of the U.S. Attorneys in question; and (b) communications between the White House and Members of Congress concerning those requests."[17] Questioning on internal White House discussions of any kind, by personnel at any level, would not be allowed. In addition, Mr. Fielding required that the interviews "be private and conducted without the need for an oath, transcript, subsequent testimony, or the subsequent issuance of subpoenas."[18] In other words, no matter what might be revealed, no other testimony or documents could be requested from the White House.

On March 21, 2007, the CAL Subcommittee authorized Chairman Conyers to issue subpoenas to Karl Rove and other present and former White House officials to obtain testimony and documents.[19] Both before and after March 21, letters were exchanged between the Committee and the White House to seek to resolve voluntarily the Committee's requests for information from the White House; but those efforts were not successful. Committee letters (one of which was sent jointly with Senate Judiciary Committee Chairman Leahy) included letters of March 9, March 22, March 28, and May 21, 2007.[20]

---

[14] *Id.*

[15] Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Fred Fielding, Counsel to the President (Mar. 9, 2007).

[16] Letter from Fred Fielding, Counsel to the President, to Patrick Leahy, Chairman, S. Comm. on the Judiciary, John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Lamar Smith, Ranking Member, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law (Mar. 20, 2007).

[17] *Id.*

[18] *Id.*

[19] *Meeting to Consider Subpoena Authorization Concerning the Recent Termination of United States Attorneys and Related Subjects Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary,* 110th Cong. (2007). In addition, the Subcommittee authorized Chairman Conyers to issue a subpoena for D. Kyle Sampson, former Chief of Staff to the Attorney General. Mr. Sampson has thus far voluntarily cooperated with the Committee's investigation.

[20] Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Fred Fielding, Counsel to the President (Mar. 9, 2007); Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Fred Fielding, Counsel to the President (Mar. 22, 2007); Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Patrick Leahy, Chairman, S. Comm. on the Judiciary, to Fred Fielding, Counsel to the President (Mar. 28, 2007); and Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Fred Fielding,

As the Committee's investigation proceeded and as additional allegations and information emerged, Chairman Conyers, CAL Subcommittee Chair Sánchez, and Committee Members Artur Davis and Tammy Baldwin wrote to Mr. Rove on April 17, 2008, asking that he voluntarily testify on the alleged politicization of the Justice Department, including the termination of U.S. Attorneys in 2006, allegations of selective prosecution, and related issues.[21] On April 29, 2008, Robert Luskin, who represents Karl Rove, offered to make Mr. Rove available for an interview only on the Siegelman matter, which would neither be under oath nor transcribed.[22] Committee Members responded on May 1 by rejecting Mr. Luskin's offer and requesting that Mr. Rove reconsider his decision not to testify voluntarily.[23] On May 9, Mr. Luskin offered that Mr. Rove respond to written questions and only with respect to the Siegelman prosecution.[24] Committee Members responded in a May 14 letter rejecting Mr. Luskin's offer and reiterating that Mr. Rove should testify on the politicization in the Department, including such matters as the U.S. Attorney firings as well as the Siegelman case.[25] On May 21, Mr. Luskin restated the two offers in his April 29 and May 9 letters.[26] Because of Mr. Rove's refusal to testify voluntarily about the politicization of the Department, Chairman Conyers issued a subpoena to Mr. Rove on May 22, pursuant to the previous authorization, directing him to appear before the CAL Subcommittee on July 10.

Subsequently, Committee staff had several discussions with Mr. Luskin in which he offered to have Mr. Rove interviewed without a transcript or oath, but without prejudice to the Committee's right to pursue its subpoena for sworn testimony. However, such an interview would be limited to questions concerning the Siegelman matter. Chairman Conyers and CAL Subcommittee Chair Sánchez wrote to Mr. Luskin to express their encouragement about the offer that Mr. Rove be interviewed without prejudice, but reiterated that Mr. Rove should be prepared to answer questions about the entire issue of politicization as described above and would be expected to appear on July 10 to do so.[27] On July 1, Mr. Luskin indicated that Mr. Rove would decline to appear before the CAL Subcommittee.[28]

Counsel to the President (May 21, 2007). All of these letters are on file with the House Committee on the Judiciary.

[21] Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, Artur Davis, member, H. Comm. on the Judiciary, and Tammy Baldwin, member, H. Comm. on the Judiciary, to Karl Rove (Apr. 17, 2008).

[22] Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (Apr. 29, 2008).

[23] Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, Artur Davis, member, H. Comm. on the Judiciary, and Tammy Baldwin, member, H. Comm. on the Judiciary, to Robert Luskin, counsel to Karl Rove (May 1, 2008).

[24] Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (May 9, 2008).

[25] Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, Artur Davis, member, H. Comm. on the Judiciary, and Tammy Baldwin, member, H. Comm. on the Judiciary, to Robert Luskin, counsel to Karl Rove (May 14, 2008).

[26] Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (May 21, 2008).

[27] Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Robert Luskin, counsel to Karl Rove (June 16, 2008).

[28] Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (May 21, 2008).

On July 3, Chairman Conyers and CAL Subcommittee Chair Sánchez wrote to Mr. Luskin urging Mr. Rove to reconsider his position and to appear pursuant to his legal obligations.[29] On July 9, Mr. Luskin confirmed that Mr. Rove would not appear, and attached a July 9 letter from White House Counsel Fred Fielding, an Office of Legal Counsel (OLC) letter regarding Mr. Rove dated August 1, 2007, and an OLC letter regarding Ms. Miers dated July 10, 2007.[30] According to Mr. Fielding's letter, Mr. Rove has "constitutional immunity . . . because Mr. Rove was an immediate presidential adviser and because the Committee seeks to question him regarding matters that arose during his tenure and that relate to his official duties in that capacity."[31]

On July 10, 2008, the CAL Subcommittee met as scheduled, and Mr. Rove in fact failed to appear. At that meeting, CAL Subcommittee Chair Sánchez issued a ruling that rejected the immunity claims with respect to Mr. Rove, and the CAL Subcommittee, by a vote of 7 to 1, sustained that ruling.[32] The ruling specifically covered Mr. Rove's refusal to appear as required by the subpoena issued to him. Chairman Conyers and CAL Subcommittee Chair Sánchez sent Mr. Rove's counsel a letter enclosing a copy of the ruling, and again urging compliance and warning of the possibility of contempt.[33] The letter also requested that Mr. Rove's counsel notify the Committee by July 16 as to whether Mr. Rove would comply with the subpoena.[34] On July 29, 2008, Mr. Rove's attorney wrote to Chairman Conyers , indicating that Mr. Rove would not comply with the subpoena but urging the Committee not to proceed with contempt.[35]

On July 15, 2008, Judiciary Committee Ranking Member Lamar Smith sent a letter and a set of questions regarding the Siegelman matter to Mr. Rove's counsel.[36] Mr. Rove's counsel provided Ranking Member Smith with written answers to those questions on July 22.[37]

II. AUTHORITY AND LEGISLATIVE PURPOSE

The Committee on the Judiciary is a standing Committee of the House of Representatives, duly established pursuant to the Rules of the House of Representatives, which are adopted pursuant to the Rulemaking Clause of the Constitution.[38] House Rule X grants to the Committee legislative and oversight jurisdiction over, *inter*

---

[29] Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Robert Luskin, counsel to Karl Rove (July 3, 2008).

[30] Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (July 9, 2008).

[31] Letter from Fred Fielding, Counsel to the President, to Robert Luskin, counsel to Karl Rove (July 9, 2008).

[32] The Politicization of the Justice Department and Allegations of Selective Prosecution: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary, 110th Cong. (2008).

[33] Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Robert Luskin, counsel to Karl Rove (July 10, 2008).

[34] *Id.*

[35] Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (July 29, 2008).

[36] Letter from Lamar Smith, Ranking Member, H. Comm. on the Judiciary, to Robert Luskin, counsel to Karl Rove (July 15, 2008).

[37] Letter from Robert Luskin, counsel to Karl Rove, to Lamar Smith, Ranking Member, H. Comm. on the Judiciary (July 22, 2008).

[38] U.S. Const. art. I, § 5, cl. 2.

alia, "judicial proceedings, civil and criminal," and "criminal law enforcement"; the "application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction"; the "organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction"; and "any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction."[39]

House Rule XI specifically authorizes the Committee and its subcommittees to "require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary."[40] The Rule also provides that the "power to authorize and issue subpoenas" may be delegated to the Committee chairman.[41] The subpoenas discussed in this report were issued pursuant to this authority.

The investigation into the alleged politicization of the Justice Department, including the termination of U.S. Attorneys in 2006, allegations of selective prosecution, and related issues, is being undertaken pursuant to the authority delegated to the Committee under Rule X as described above. The oversight and legislative purposes of this investigation fall into two related categories: 1) investigating and exposing any possible malfeasance, abuse of authority, or violation of existing law on the part of the Executive Branch related to these concerns, and 2) considering whether the conduct uncovered may warrant additions or modifications to existing Federal law, such as more clearly prohibiting the kinds of improper political interference with prosecutorial decisions as have been alleged here.

HEARINGS

In its investigation into the alleged politicization of the Justice Department, including the termination of U.S. Attorneys in 2006, allegations of selective prosecution, and related issues, the CAL Subcommittee held 6 days of hearings, on March 6, March 29, May 3, June 21, July 12, 2007, and July 10, 2008. In addition, the Subcommittee on Crime, Terrorism and Homeland Security and the CAL Subcommittee held 2 days of joint hearings on October 23, 2007 and May 14, 2008. The full Committee held 2 days of hearings, on May 10 and May 23, 2007. More discussion of these hearings is contained in the background section of this Report.

COMMITTEE CONSIDERATION

On July 30, 2008, the Committee met in open session and ordered this Report favorably reported, without amendment, by a vote of 20 to 14, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following recorded votes took place:

[39] House Rule X(1)(k)(1) and (7); House Rule X(2)(b)(1)(A)-(C).
[40] House Rule XI(2)(m)(1)(B).
[41] House Rule XI(2)(m)(3)(A)(i).

1. On ordering this Report favorably reported, without amendment.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman			
Mr. Boucher	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Delahunt	X		
Mr. Wexler			
Ms. Sánchez	X		
Mr. Cohen	X		
Mr. Johnson	X		
Ms. Sutton	X		
Mr. Gutierrez	X		
Mr. Sherman			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Davis	X		
Ms. Wasserman Schultz	X		
Mr. Ellison	X		
Mr. Smith (Texas)		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot			
Mr. Lungren		X	
Mr. Cannon		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	
Total	20	14	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this Report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this Report does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost incurred in carrying out the Report will be negligible.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Report will assist the Committee and the House of Representatives in vindicating Congress's responsibility to conduct appropriate oversight of the Executive Branch and vindicating the rule of law.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this Report in article 1, section 1 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, this Report does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

ADDITIONAL VIEWS OF CHAIRMAN CONYERS AND SUBCOMMITTEE CHAIR SÁNCHEZ

On July 30, 2008, the Judiciary Committee approved a Report and Resolution recommending that the House of Representatives cite former White House Deputy Chief of Staff Karl Rove for contempt of Congress for violating a Committee subpoena. The resolution also recommends that the House pursue other legal remedies as appropriate to enforce the outstanding subpoena issued to Mr. Rove. The Committee vote in support of the Report and Recommendation was 20 to 14.

The Committee took this step with great reluctance but compelling justification. The subpoena violated by Mr. Rove arose out of the Committee's continuing investigation into the improper politicization of the Department of Justice, including the firing of U.S. Attorneys, allegations of selective prosecution, and related matters. Despite extensive efforts to secure Mr. Rove's voluntary cooperation with the Committee's investigation into these important matters, and despite the issuance of a compulsory subpoena, Mr. Rove has refused to provide sworn testimony needed for that investigation. Mr. Rove has refused even to appear before the Committee and assert whatever privileges that he believes may apply to his testimony, relying on sweeping and invalid claims of "absolute immunity"– claims that are identical to those recently rejected by the federal court in Committee on the Judiciary, U.S. House of Representatives v. Harriet Miers and Josh Bolten. The self-described "accommodations" or compromises that Mr. Rove has offered are almost entirely illusory, and would unreasonably limit the Committee's ability to investigate these matters. The Committee's vote was thus necessary to preserve its constitutional authority and that of the House of Representatives and to ensure that the congressional oversight process remains effective.

The following statement of Additional Views, which largely reflects information provided to the Judiciary Committee in a memorandum of July 30, 2008, from Chairman Conyers, provides background information for Members of the House as they consider this important matter.

I. Factual Background Regarding Mr. Rove's Alleged Role in the Improper Politicization of the Department of Justice

Since early 2007, the Judiciary Committee has investigated allegations regarding the improper politicization of the Department of Justice, including the firing of U.S. Attorneys, allegations of selective prosecution, and related matters. New evidence continues to surface in this investigation, such as recent reports from the Department's Offices of the Inspector General and Professional Responsibility indicating, among other things, that Mr. Rove and other Administration personnel worked to have a childhood friend of Mr. Rove appointed as an immigration judge, a career appointment that is supposed to be free from political influence.[1]

The harms caused by this alleged politicization are readily apparent. Respected former Deputy Attorney General Jim Comey testified before the Commercial and Administrative Law Subcommittee last year about the fragility of the Department's reservoir of credibility, and the difficulty of earning back the trust of the American people once the Department's reputation for honesty and impartial justice has been tarnished.[2] More recently, Attorney General Mukasey testified before the full Committee that he was "well aware of the allegations that politics has played an inappropriate role at the Justice Department' and agreed that "[t]oo many of those allegations were borne out" in a recent Department watchdog report.[3] Attorney General Mukasey has also acknowledged that, if true, the allegations regarding selective prosecution in the Siegelman case "would be stunning."[4]

---

[1] *Joint Report of the Office of Professional Responsibility and the Office of the Inspector General on Investigation of Allegations of Politicized Hiring By Monica Goodling and Other Staff in the Office of the Attorney General* (July 28, 2008); *Joint Report of the Office of Professional Responsibility and the Office of the Inspector General on An Allegations of Politicized Hiring in the Department of Justice Honors Program and Summer Law Intern Program* (June 24, 2008).

[2] Comey, May 3, 2007, Subcomm. on Commercial and Admin. Law, Hearing at 42-43.

[3] Mukasey, July 23, 2008, H. Comm. on the Judiciary, Hearing at 5.

[4] Mukasey, July 9, 2008, S. Comm on the Judiciary, Hearing at 35.

The U.S. Attorney firings have raised particular alarm from commentators across the political spectrum. Republican former Attorney General Thornburgh testified before a joint hearing of the Commercial and Administrative Law and Crime, Terrorism, and Homeland Security Subcommittees that, in his view, the investigation had shown that the Department "fired U.S. Attorneys not for performance-based reasons, but for political ones."[5] Similarly, the nonpartisan American Judicature Society wrote last year that, "on the basis of the facts as we know them today, the dismissals are indefensible."[6] And, as noted above, two recent joint Inspector General/Office of Professional Responsibility reports describe pervasive politicization of Department functions, in violation of federal law, civil service rules, and the Department's own policies.[7]

A. Forced Resignations of U.S. Attorneys

Early last year, reports appeared in the news media that a group of U.S. Attorneys had been told to resign by the Justice Department.[8] Ultimately it was learned that seven U.S. Attorneys were forced to resign on

---

[5]Thornburgh, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and Commercial and Administrative Law, Testimony at 6.

[6]American Judicature Society, *Putting Justice Back in the Department*, June 23, 2007.

[7]*Joint Report of the Office of Professional Responsibility and the Office of the Inspector General on Investigation of Allegations of Politicized Hiring By Monica Goodling and Other Staff in the Office of the Attorney General* (July 28, 2008) and *Joint Report of the Office Professional Responsibility and the Office of the Inspector General on Allegations of Politicized Hiring in the Department of Justice Honors Program and Summer Law Intern Program* (June 24, 2008).

[8]*See, e.g.*, Johnston, *Dismissed U.S. Attorneys Received Strong Evaluations*, N.Y. TIMES, Feb. 25, 2007, at A19; Eggen, *Justice Department Fires 8th U.S. Attorney; Dispute Over Death Penalty Cited*, WASH. POST, Feb. 24, 2007, at A2; Eggen, *Fired Prosecutor Disputes Justice Dept. Allegation; He Calls Testimony 'Unfair'; Meanwhile, Senate Panel Votes to Limit Attorney General's Power*, WASH. POST, Feb. 9, 2007, at A6; Taylor & Gordon, *U.S. Attorneys' Selection Is Questioned*, SEATTLE TIMES, Jan. 28, 2007, at A8 (noting that the Attorney General "is transforming the ranks of the nation's top federal prosecutors by firing some and appointing conservative loyalists from the Bush Administration's inner circle who critics say are unlikely to buck Washington, D.C."); Soto & Thornton, *Lam to Resign Feb. 15 as Speculation Swirls; Some See Politics at Play in Ouster of U.S. Attorney*, SAN DIEGO UNION–TRIB., Jan. 17, 2007, at A1.

December 7, 2006, an eighth U.S. Attorney had been asked to resign in June 2006, and a ninth U.S. Attorney had been asked to resign in January 2006.[9]

The plan appears to have emerged at the outset of President Bush's second term, in response to questions by Karl Rove and then-White House Counsel Harriet Miers whether sitting U.S. Attorneys should be allowed to retain their positions. Mr. Rove himself appears to have raised the issue of whether the Administration would consider replacing all 93 U.S. Attorneys or "selectively replace" at least some of them.[10] According to one press report, Mr. Rove's apparent interest in replacing all 93 U.S. Attorneys "was seen as a way to get political cover for firing the small number of U.S. Attorneys the White House actually wanted to get rid of."[11] This targeted list reportedly included U.S. Attorney Patrick Fitzgerald, who at the time was investigating Mr. Rove's role in the leaking of CIA agent Valerie Plame's covert identity. When Mr. Rove made the suggestion to fire all of the U.S. Attorneys, he had already been before the grand jury several times in the Plame case. In addition, recent reports indicate that, just weeks earlier, an Illinois Republican political operative had told an associate he was working with Karl Rove to have Mr. Fitzgerald replaced.[12]

Mr. Rove's query was presented to Kyle Sampson, then a deputy Chief of Staff to Attorney General Alberto Gonzales, who responded that most U.S.

---

[9]The U.S. Attorneys asked to resign were Todd Graves (W.D. Mo.), Bud Cummins (E.D. Ark.), John McKay (W.D. Wa.), Carol Lam (S.D. Ca.), David Iglesias (D. NM.), Paul Charlton (D.Az.), Daniel Bogden (D. Nev.), Kevin Ryan (N.D. Ca.), and Margaret Chiara (W.D. Mi.).

[10]Eggen & Goldstein, *Justice Dept. Would Have Kept 'Loyal' Prosecutors*, WASH. POST, Mar, 16, 2007, at A2; OAG 180. (The Department of Justice assigned each document produced to the Committee a unique "bates number" consisting of a prefix and a number, and this memorandum will use these bates numbers in referencing Department documents.)

[11]Shapiro, *Documents Show Justice Ranking U.S. Attorneys*, NPR, Apr. 13, 2007, available at http://www.npr.org/templates/story/story.php?storyId=9575434.

[12]Letter from Principal Deputy Assistant Attorney General Keith Nelson to Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, transmitting Supplemental Responses of U.S. Attorney Patrick Fitzgerald (June 18, 2008); Isikoff, *In the Rezko Trial, A New Name Surfaces: Karl Rove*, NEWSWEEK, May 5, 2008; May 1, 2008, Testimony of Ali Ata at 129-30 *in* United States v. Rezko, No. 05 CR 691 (N.D. Ill.)

Attorneys "are doing a great job, are loyal Bushies, etc." and that even "piecemeal" replacement of U.S. Attorneys would cause political upheaval.[13] "That said," Mr. Sampson wrote, "if Karl thinks there would be political will to do it, then so do I."[14] The idea for a wholesale replacement was thus rejected as too disruptive, and because it would have meant the replacement of some U.S. Attorneys who were good performers or who were "loyal Bushies."[15] Instead, a narrower plan under which a subset of the U.S. Attorneys were to be replaced was put in motion. Kyle Sampson ran the plan over a period of just under two years, during which he maintained and revised various lists of U.S. Attorneys to be fired or retained, and repeatedly circulated these drafts to the White House.[16]

While the Committee has interviewed Mr. Sampson in detail, and has spoken with most of the significant players inside the Justice Department, the reasons why most of the fired U.S. Attorneys were selected for removal, and who identified them as candidates for Mr. Sampson's list, remain unclear. However, in addition to his overall role, evidence suggests that Mr. Rove had a more particularized role in at least the following cases:

1. David Iglesias (D. N.M.)

A primary reason David Iglesias appears to have been targeted for replacement is because he had drawn the ire of New Mexico state Republicans for his vote fraud enforcement decisions and for failing to bring a particular matter that they wanted pursued. New Mexico Republican party Chief Allen Weh reportedly pressed Karl Rove through an aide to have Mr. Iglesias replaced in 2005 because he was dissatisfied by Mr. Iglesias' charging decisions in vote fraud matters.[17] That issue was apparently

---

[13]OAG 180.

[14]*Id.*

[15]*Id.*

[16]Eggen & Goldstein, *Justice Weighed Firing 1 in 4*, WASH. POST, May 17, 2007, at A1.

[17]Talev & Taylor, *Rove was asked to fire U.S. Attorney*, MCCLATCHY NEWS, Mar. 10, 2007; Gisik, *Rove Played Role in Iglesias Dismissal,* ALBUQUERQUE TRIB., Mar. 12, 2007.

important enough to Mr. Weh that he raised his complaints about Mr. Iglesias again directly with Mr. Rove in December 2006; he was told by Mr. Rove at that time, apparently just one day after the firing calls were made, that "he's gone."[18]

Two other New Mexico Republicans, Mickey Barnett and Pat Rogers, came to Washington, D.C., in the summer of 2006 and met with an aide to Karl Rove, Scott Jennings, as well as then-Department of Justice White House Liaison Monica Goodling, and Counselor to the Attorney General Matthew Friedrich.[19] Mr. Friedrich testified that Mr. Rogers and Mr. Barnett were concerned about Mr. Iglesias failing to bring a particular vote fraud case against the ACORN community organization – he stated that "they were not happy with Dave Iglesias."[20] Mr. Friedrich also testified that he met a second time with Mr. Barnett and Mr. Rogers over Thanksgiving 2006, when they informed him that they "were working towards" having Mr. Iglesias removed and that they had communicated with Karl Rove and Senator Domenici on that subject.[21] It was only during that same November 2006 that Mr. Iglesias was added to the firing list.[22]

In failing to satisfy Republican concerns about the need for vigorous enforcement of alleged vote fraud cases, David Iglesias appears to have run up against a powerful political force. The evidence indicates that Karl Rove monitored this issue and heard complaints about some U.S. Attorneys on the subject, again including David Iglesias.[23] Mr. Rove's interest in this subject

---

[18]*Id.*

[19]OAG 114, 572; Matthew Friedrich, May 4, 2007, Interview at 31-40.

[20]Matthew Friedrich, May 4, 2007, Interview at 34-35.

[21]Matthew Friedrich, May 4, 2007, Interview at 38-39. Ultimately, after Mr. Iglesias was fired, Mr. Rogers' name was among those submitted by Senator Domenici as a possible replacement U.S. Attorney. OAG 1752.

[22]DAG 010-011

[23]OAG 850-51; Sampson, Apr. 15, 2007, Interview at 26-27; Eggen & Goldstein, *Vote Fraud Complaints by GOP Drive Dismissals*, WASH. POST, May 14, 2007 ("Rove, in particular, was preoccupied with pressing Gonzales and his aides about alleged voting problems in a handful of

was so acute that, in April 2006, he spoke about the issue to the Republican National Lawyers Association and named a number of jurisdictions that supposedly posed heightened vote fraud risks, including New Mexico, Wisconsin, and Washington, all swing States in recent elections, as well as other politically significant States such as Florida and Missouri, where U.S. Attorneys were at one point or another on the firing list.[24]

2. Steven Biskupic (E.D. Wisc.)

No Justice Department witness has explained why Milwaukee U.S. Attorney Steven Biskupic appeared on the March 2005 version of the firing list.[25] Kyle Sampson recalled only that Mr. Biskupic was not a "prominent" U.S. Attorney.[26] On the other hand, the Administration did produce documents describing vote fraud issues in Mr. Biskupic's district during the 2004 elections that Karl Rove appears to have printed and viewed just weeks before Mr. Biskupic was placed on the firing list, and which contain the handwritten notation "Discuss w/Harriet."[27] The record also contains a lengthy catalog of Republican complaints about Mr. Biskupic's failure to bring more vote fraud cases during this time, some of which reached Mr. Rove, and some of which Mr. Rove may have passed on to Kyle Sampson.[28]

---

battleground states").

[24]Karl Rove, Speech to Republican National Lawyers Association, Apr. 7, 2006, available at http://www.talkingpointsmemo.com/archives/013817.php.

[25]OAG 005 - OAG 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 information I got tonight."

[26]Sampson, Apr. 18, 2007, Interview at 51-52.

[27]OAG 850-51.

[28]OAG 820-47; *see also* Unnumbered Documents produced by the Department of Justice on May 17, 2007, in response to Apr. 10, 2007, letter of Senator Patrick J. Leahy (on file with the H. Comm. on the Judiciary); Sampson, Apr. 15, 2007, Interview at 168-70; Bice, *State GOP Official Pushed Vote Fraud Issue*, MILWAUKEE J. SENTINEL, Apr. 7, 2007; Stein, *82 Felons May Have Voted in State*, WIS. STATE J., Apr. 13, 2007.

3. Bud Cummins (E.D. of Ark.)

Regarding Bud Cummins, the Administration has equivocated, sometimes suggesting that he was forced out for performance reasons and other times stating it was simply to make room for Karl Rove's former aide Tim Griffin to serve as U.S. Attorney.[29] On February 23, 2007, the Justice Department sent a letter to several Senators on the Tim Griffin appointment, incorrectly stating that Karl Rove did not have any role in the decision to appoint Tim Griffin as interim U.S. Attorney for the Eastern District of Arkansas. That inaccurate letter, which the Department was subsequently forced to disavow,[30] was drafted by Kyle Sampson and apparently approved by Christopher Oprison in the White House Counsel's office, despite the fact that each had extensive knowledge of the Tim Griffin situation at the time.[31] Mr. Sampson had previously written that "getting [Mr. Griffin] appointed was important to Harriet, Karl, etc."[32] And just a week before he signed off on this letter, Mr. Oprison had received an e-mail from Tim Griffin discussing the appointment controversy that also was addressed to Karl Rove, suggesting – at the very least – Mr. Rove's awareness of the matter.[33]

B. Alleged Selective Prosecution of Former Alabama Governor Don Siegelman

Concerns that politics may have played an improper role in the investigation and prosecution of former Alabama Governor Don Siegelman have been widely aired in the press, culminating in a petition urging the Committee to open an inquiry that was signed by 44 former

---

[29]*Compare* McNulty, Feb. 6, 2007, S. Comm. on the Judiciary, Testimony at 22-23 (Cummins forced out merely so Griffin could serve) *with* OAG 005 - OAG 008 (listing Bud Cummins as one of the "weak U.S. Attorneys who have been ineffectual managers and prosecutors").

[30]Letter from Richard Hertling to John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, (Mar. 28, 2007).

[31]OAG 127-29, 971-73, 978-85, 990-1002, 1130-34, 1781-82, 1841, 1850, 1853-59; OLA 03-04, 08-10.

[32]OAG 127-29.

[33]OAG 1753-55.

State Attorneys General, both Democrats and Republicans, and received by the Committee in July 2007.[34] 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."[35]

1. Background

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.[36] He was at the time a "major political force" in Alabama, and early polls indicated that he would defeat Governor Riley in a rematch.[37]

In May 2004, Mr. Siegelman was indicted by the U. S. Attorney for the Northern District of Alabama, Alice Martin, on charges related to alleged bid rigging in State contracts.[38] Those charges were dismissed before trial,

---

[34]Lipton, *Congressional Inquiry Urged in Prosecution of Ex-Governor*, N.Y. TIMES, July 17, 2007.

[35]*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.

[36]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*, MONTGOMERY ADVERT., Nov. 7, 2002; Morgan, *Governor's Role Remembered For 'Fuzzy Numbers,'* BALDWIN COUNTY NOW, July 19, 2007.

[37]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*, N.Y. 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.

[38]Rawls, *Judge Biased, Lawyers Contend*, MONTGOMERY ADVERT., Sept. 21, 2004.

however, when the prosecution could not produce evidence connecting Mr. Siegelman to the alleged misconduct.[39]

Several months later, a new indictment based on entirely different charges was brought under seal against Mr. Siegelman, by the U.S. Attorney for the Middle District of Alabama, Leura Canary. That indictment was made public in October 2005 and, after a June 2006 trial, Mr. Siegelman was acquitted of 25 of the 32 filed charges, and was convicted on 7 counts of corruption or obstruction of justice related charges. In June 2007, Mr. Siegelman was sentenced to 7 years, 4 months in prison (the prosecutors had requested 30 years).[40]

On March 27, 2008, the Eleventh Circuit Court of Appeals granted Mr. Siegelman's motion for release on bond pending appeal, finding 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.[41]

2. 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 an Alabama Republican operative named Bill Canary say that Karl Rove had contacted the Justice Department about bringing a prosecution of Don Siegelman.[42] Mr. Canary is married to the U.S. Attorney in the Middle District of Alabama, Leura Canary, and Ms. Simpson stated in the affidavit

---

[39]Davis & McGrew, *Rulings Displease Federal Attorney*, MONTGOMERY ADVERT., Oct. 6, 2004; and Hamburger & Savage, *Ex-Governor Says He Was Target of Republican Plot*, L.A. TIMES, June 26, 2007.

[40]Nossiter, *Former Alabama Governor Gets 7-Year Sentence in Bribery Case*, N.Y. TIMES, June 29, 2007.

[41]Order of Eleventh Circuit in *United States v. Siegelman*, Case No. 07-13163-B at 4 (March 27, 2008).

[42]Dana Jill Simpson, May 21, 2007, Affidavit at ¶ 11-16.

that Mr. Canary also said that "my girls would take care of" Mr. Siegelman.[43] 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.[44]

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.[45] 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."[46] And Mr. Riley claimed that the prosecution would try 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.[47] Mr. Rove himself made a brief, and limited, comment on the matter in June 2007, stating "I know nothing about any

---

[43] *Id.* ¶ 14.

[44] *Id.* ¶ 15.

[45] Dana Jill Simpson, Sept. 14, 2007, Interview at 25-27.

[46] *Id.* at 56-57.

[47] *See, e.g.*, Beyerle, *Siegelman, Scrushy Sentencing Will Go On This Week as Scheduled*, NORTHWEST ALA. TIMES DAILY, June 24, 2007; Zagorin, *Rove Named In Alabama Controversy*, TIME, June 1, 2007.

phone call," but not addressing the underlying allegations.[48] (It has never been alleged that Mr. Rove was on the phone call described by Jill Simpson; the question is whether Mr. Rove previously had 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.[49] 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 talked to the Department of Justice" about Mr. Siegelman.[50] Finally, in recent written answers provided by his lawyer to questions posed by Ranking Member Smith, Mr. Rove reiterated his denials that he attempted to influence the Siegelman prosecution.[51] Available evidence raises questions about these denials, however.

First, Mr. Rove's written answers to the questions posed by ranking Member Smith do not appear to resolve the questions about his possible role in the matter. For example, Mr. Rove was asked if he ever communicated with "any Department of Justice officials, State of Alabama officials, or any individual" about the investigation or prosecution of Governor Siegelman. He answered only that he had not communicated with "Justice Department or Alabama officials" about the matter. His notable failure to address whether

---

[48]McCarter, *Siegelman awaits sentencing Tuesday*, HUNTSVILLE TIMES, June 24, 2007.

[49]*See* Statements of Karl Rove, FOX NEWS, Feb. 25, 2008, available at 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.

[50]DePaulo, *Karl Rove Likes What He Sees*, GQ MAG. BLOG, Apr. 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, aired Apr. 6, 2008.

[51]Answers to House Judiciary Committee Ranking Member Lamar Smith from Karl C. Rove, July 22, 2008.

he communicated with any other "individual" suggests that Mr. Rove may have indeed communicated with political operatives such as Bill Canary, the Governor's son Rob Riley, non-Department of Justice Executive Branch officials such as his White House colleagues, or even members of the federal Judicial Branch.[52]

While other aspects of Mr. Rove's denial appear broader on their face, such as the assertion that he "never attempted either directly or indirectly, to influence these matters," it is impossible to fully evaluate his statement without follow-up questioning that would reveal exactly what he means by terms such as "influence" and "these matters" or whether there are any other ambiguities, gaps, or evasions in his denials. Without such questioning, the Committee cannot know, for example, whether Mr. Rove took steps related to the prosecution of Governor Siegelman that he does not characterize as rising to the level of "influencing" the case, or whether members of his staff may have taken actions regarding this matter with his knowledge and approval but that he did not specifically direct them to take. In addition, Mr. Rove never denies having any relevant knowledge about the Siegelman prosecution; he only denies having taken certain actions himself. The Committee's subpoena demands that he testify as to any relevant knowledge that he may possess.

As to the strong denials by Rob Riley and others that there was a phone call with Ms. Simpson on November 18, 2002, as Ms. Simpson testified, she provided cell phone records to the Committee that reflect an eleven minute call to Mr. Riley's number on that very morning.[53] Those denials thus appear to be, in at least some sense, inaccurate.

---

[52]Asked about this omission by the LA Times, Mr. Rove's counsel asserted that, regardless of their wording, the answers were intended to cover "any other human being on Earth." Hamburger, *Siegelman to Karl Rove: Not Buying Explanation*, LA TIMES, July 28, 2008. This confused back and forth only highlights the need for proper questioning of Mr. Rove and the flaws inherent in the device of written questions for these purposes.

[53]Davis, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Hearing at 32; Dana Jill Simpson, Sept. 14, 2007, Interview, Exhibit 4.

Further evidence on the question whether Karl Rove or other senior figures played some role in the Siegelman prosecution was revealed at a joint hearing of the Crime, Terrorism, and Homeland Security Subcommittee and the Commercial and Administrative Law Subcommittee on October 23, 2007. At that hearing, former U.S. 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.[54] 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.[55] 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.[56] 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."[57] 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."[58]

---

[54]Jones, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 3, 13.

[55]*Id.* at 8.

[56]*Id.* at 8-9.

[57]Jones, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Hearing at 39.

[58]*Id.*

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

> "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."[59]

Mr. Jones's testimony is especially troubling 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.[60] 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[61] – at the same time that Karl Rove was allegedly 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 any 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.

---

[59]Jones, Oct. 23, 2007, Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, Testimony at 12.

[60]Dana Jill Simpson, Sept. 14, 2007, Interview at 49-52.

[61]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.

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's statements are "absolutely not true."[62] But other evidence strongly corroborates Mr. Jones's 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 "'Washington' had asked that another look be taken at the entire investigation."[63] 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."[64] In mid-2005, however, "the case came back to life."[65]

II. Prior Efforts to Obtain Mr. Rove's Testimony

Because Mr. Rove is an important witness who could provide information that is unavailable through any other source, Chairman Conyers sought Mr. Rove's voluntary compliance with the Committee's investigation more than eighteen months ago, along with the cooperation of other White House witnesses with knowledge of these events.[66] Although White House Counsel Fred Fielding responded that he was prepared to make Mr. Rove and other White House officials available for interviews with the House and

---

[62]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, Oct. 10, 2007.

[63]Letter from Mark White to H. Comm. on the Judiciary staff (Dec. 7, 2007).

[64]Letter from Art Leach to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (Apr. 14 , 2008).

[65]*Id.*

[66]Letter from John Conyers, Jr., Chairman, H. Comm. On the Judiciary and Linda Sánchez, Chair, Subcomm. On Commercial and Admin. Law to Fred Fielding, Counsel to the President (Mar. 9, 2007).

Senate Judiciary Committees on a joint basis, his offer was conditioned on unreasonably limiting preconditions and scope restrictions.[67]

Mr. Fielding's offer required that the interviews be confined to "the subject of (a) communications between the White House and persons outside the White House concerning the request for resignations of the U.S. Attorneys in question; and (b) communications between the White House and members of Congress concerning those requests."[68] Questioning on internal White House discussions of any kind and by personnel at any level would not be allowed. In addition, Mr. Fielding required that the interviews "be private and conducted without the need for an oath, transcript, subsequent testimony, or the subsequent issuance of subpoenas."[69] In other words, the Committee would have to agree in advance that, no matter what was revealed, no other testimony or documents could be requested from the White House.

Given Mr. Fielding's unreasonably restrictive offer, on March 21, 2007, the Commercial and Administrative Law Subcommittee (CAL Subcommittee) authorized Chairman Conyers to issue subpoenas to Karl Rove and other White House personnel with relevant knowledge or documents.[70] Both before and after March 21, letters were exchanged between the Committee and the White House to seek to resolve voluntarily the Committee's requests for information from the White House; but those efforts were not successful. Committee letters (some of which were sent by

---

[67]Letter from Fred Fielding, Counsel to the President, to Patrick Leahy, Chairman, S. Comm. on the Judiciary, John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Lamar Smith, Ranking Member, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law (Mar. 20, 2007).

[68]*Id.*

[69]*Id.*

[70]*Meeting to Consider Subpoena Authorization Concerning the Recent Termination of United States Attorneys and Related Subjects Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary,* 110th Cong. (2007). In addition, the Subcommittee authorized Chairman Conyers to issue a subpoena for D. Kyle Sampson, former Chief of Staff to the Attorney General. Mr. Sampson has thus far voluntarily cooperated with the Committee's investigation.

Chairman Conyers and Senate Judiciary Committee Chairman Leahy) included letters of March 9, March 22, March 28, and May 21, 2007.[71]

On July 26, 2007, Senate Judiciary Committee Chairman Patrick Leahy issued a subpoena for Mr. Rove to testify on August 2 and produce documents related to the U.S. Attorneys investigation. Mr. Fielding sent an August 1 letter to Senators Leahy and Specter informing them that the President would invoke executive privilege to direct Mr. Rove not to produce responsive documents or testify about the firings.[72] In addition, the letter cited attached documents from the Department of Justice to assert that Mr. Rove was "immune from compelled congressional testimony" as an "immediate presidential advisor" and would not even appear in response to the Senate Judiciary Committee's subpoena.[73] On November 29, 2007, Senator Leahy issued a ruling that the White House's claims of executive privilege and immunity were not legally valid. On December 13, 2007, the Senate Judiciary Committee approved a contempt citation for Mr. Rove on a 12 to 7 vote,[74] rejecting the White House positions on executive privilege and immunity.

As the House Judiciary Committee's investigation proceeded, and as additional allegations and information emerged regarding Mr. Rove, Chairman Conyers, CAL Subcommittee Chair Sánchez, and Committee

---

[71]Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Fred Fielding, Counsel to the President (Mar. 9, 2007); Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Fred Fielding, Counsel to the President (Mar. 22, 2007); Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Patrick Leahy, Chairman, S. Comm. on the Judiciary, to Fred Fielding, Counsel to the President (Mar. 28, 2007); and Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Fred Fielding, Counsel to the President (May 21, 2007).

[72]Letter from Fred Fielding, Counsel to the President, to Patrick Leahy, Chairman, S. Comm. on the Judiciary, and Arlen Specter, Ranking Member, S. Comm. on the Judiciary (Aug. 1, 2007).

[73]*Id.*

[74]Two senior Republicans, Sens. Arlen Specter (Pa.) and Charles E. Grassley (Iowa), supported the contempt citation.

members Artur Davis and Tammy Baldwin wrote directly to Mr. Rove, requesting that he voluntarily testify regarding the politicization of the Justice Department, including the termination of U.S. Attorneys, the Siegelman matter, and related issues.[75] On April 29, 2008, Robert Luskin, who represents Karl Rove, offered to make Mr. Rove available for an interview limited to the Siegelman matter and that would be neither under oath nor transcribed.[76] Committee members responded on May 1 by rejecting Mr. Luskin's offer on the grounds that such an informal procedure would not generate a useable record and would only confuse matters further, and in particular pointing out that artificially limiting the inquiry to the Siegelman matter would frustrate the Committee's ability to get needed information on the entire subject of improper politicization.[77] On May 9, Mr. Luskin offered that Mr. Rove respond to written questions, but again only with respect to the Siegelman prosecution.[78] Committee members responded in a May 14 letter rejecting that offer as obviously unacceptable, both because of the subject matter limitation and because a written exchange would not allow for the give and take and follow-up questioning that is crucial to getting to the truth.[79] In an effort to avoid the need for a subpoena, Committee members did suggest further accommodations to Mr. Rove, such as offering to provide

---

[75]Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, Artur Davis, member, H. Comm. on the Judiciary, and Tammy Baldwin, member, H. Comm. on the Judiciary, to Karl Rove (Apr. 17, 2008).

[76]Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (Apr. 29, 2008).

[77]Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, Artur Davis, member, H. Comm. on the Judiciary, and Tammy Baldwin, member, H. Comm. on the Judiciary, to Robert Luskin, counsel to Karl Rove (May 1, 2008).

[78]Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (May 9, 2008).

[79]Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, Artur Davis, member, H. Comm. on the Judiciary, and Tammy Baldwin, member, H. Comm. on the Judiciary, to Robert Luskin, counsel to Karl Rove (May 14, 2008).

a written initial list of questions that would be posed to him at a hearing.[80] But on May 21, Mr. Luskin responded by merely restating his prior offers and declining to accept the Committee's additional accommodations.[81] Because of Mr. Rove's refusal to testify voluntarily, Chairman Conyers on May 22, 2008, issued a subpoena calling for Mr. Rove to appear before the Subcommittee on July 10.

Subsequently, Committee staff had several discussions with Mr. Luskin whereby Mr. Luskin offered to have Mr. Rove interviewed, still without a transcript or oath, but at least without prejudice to the Committee's right to pursue its subpoena for sworn testimony. However, Mr. Luskin again insisted that such an interview be limited only to questions concerning the Siegelman prosecution. Chairman Conyers and CAL Subcommittee Chair Sánchez wrote to Mr. Luskin to express their encouragement about the offer to be interviewed without prejudice, but reiterating that Mr. Rove must answer questions about the entire subject of politicization, including the U.S. Attorney firings and the Siegelman case, and was expected to appear on July 10 to do so.[82] On July 1, Mr. Luskin indicated that Mr. Rove would decline to appear.[83] On July 3, Chairman Conyers and CAL Subcommittee Chair Sánchez wrote to Mr. Luskin urging Mr. Rove to reconsider his position and to appear pursuant to his legal obligations.[84]

A July 9 letter from Mr. Luskin again stated that Mr. Rove would not appear, and attached a July 9 letter from White House Counsel Fred Fielding,

---

[80] *Id.*

[81] Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (May 21, 2008).

[82] Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Robert Luskin, counsel to Karl Rove (June 16, 2008).

[83] Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (May 21, 2008).

[84] Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Robert Luskin, counsel to Karl Rove (July 3, 2008).

and two Office of Legal Counsel letters - one regarding Mr. Rove dated August 1, 2007, and another regarding Ms. Miers dated July 10, 2007.[85] No more recent DOJ analysis of Mr. Rove's alleged right to ignore the Committee subpoena was offered. Mr. Fielding asserted that Mr. Rove had "constitutional immunity . . . because Mr. Rove was an immediate presidential adviser and because the Committee seeks to question him regarding matters that arose during his tenure and relate to his official duties in that capacity."[86] Mr. Fielding did not explain what aspects of the U.S. Attorney firings or the Siegelman prosecution relate to Mr. Rove's official duties as a White House aide.

On July 10, 2008, the CAL Subcommittee met as scheduled but Mr. Rove failed to appear. Ms. Sánchez ruled that Mr. Rove's claims of Executive Privilege-based immunity from Congressional subpoena were not valid. That ruling was upheld by a 7-1 vote of the CAL Subcommittee.[87] A copy of the ruling was mailed to Mr. Rove's attorney on July 10, along with a warning about the possibility of contempt and a request for a response by July 16, 2008, as to whether Mr. Rove would comply with the subpoena.[88] No response was received until July 29, 2008, when Mr. Rove's attorney again indicated that Mr. Rove would not comply with the subpoena but urged the Committee not to recommend contempt against Mr. Rove.[89] On July 30, 2008, the Committee considered and approved the Report and Resolution

---

[85]Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (July 9, 2008).

[86]Letter from Fred Fielding, Counsel to the President, to Robert Luskin, counsel to Karl Rove (July 9, 2008).

[87]*The Politicization of the Justice Department and Allegations of Selective Prosecution: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary,* 110th Cong. (2008).

[88]Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Robert Luskin, counsel to Karl Rove (July 10, 2008).

[89]Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (July 29, 2008).

recommending that the House cite Mr. Rove for Contempt of Congress, by a vote of 20 to 14.

The next day, the United States District Court ruled in the Committee's civil case seeking enforcement of subpoenas issued to Harriet Miers and Josh Bolten, that senior Presidential advisors are not "absolutely immune" from compelled Congressional testimony.[90] This ruling validated the Committee's position that Mr. Rove had no legal justification for refusing to appear in response to the subpoena; indeed, Mr. Rove's attorney previously had acknowledged that the "precise legal issue" of whether or not Mr. Rove was immune from being required to appear was pending before Judge Bates. Accordingly, Chairman Conyers wrote to Mr. Rove's attorney on August 1, 2008, to arrange for Mr. Rove's testimony so as to avoid the need to pursue contempt proceedings in the full House.[91] Unfortunately, Mr. Rove's counsel has made clear through communications with Committee staff that, despite the District Court's clear legal ruling, Mr. Rove will continue to refuse to appear pursuant to the Committee's subpoena until all appellate proceedings are completed. At this point, it is impossible to predict the course or duration of such appeals, which could include proceedings in the United States Supreme Court.

III. Testimony From Mr. Rove Is Essential For the Committee to Conduct Meaningful Oversight and to Consider Possible Legislation

The Committee has authority under the Constitution, as reflected in Supreme Court decisions and Rules of the House of Representatives, to investigate and expose possible violations of law and abuses of Executive power. As the Supreme Court ruled in the Watkins case fifty years ago,

---

[90] *See* Memorandum Opinion and Order dated July 31, 2008, in Committee on the Judiciary v. Miers, et al, Civil Action No. 08-0409 (JDB).

[91] Letter from John Conyers, Jr. Chairman, H. Comm. On the Judciary to Robert Luskin, counsel to Karl Rove (August 1, 2008). In addition, on August 26, 2008, the United States District Judge denied the White House's request to stay his ruling pending appeal, further depriving Mr. Rove of any justification for declining to appear pursuant to the subpoena. See Memorandum Opinion and Order dated August 26, 2009, in Committee on the Judiciary v. Miers, et al, Civil Action No. 08-0409 (JDB).

Congress has "broad" power to investigate "the administration of existing laws" and to "expose corruption, inefficiency or waste," or similar problems in the Executive Branch.[92] The Committee also needs more complete information on the issue of the politicization of the Department of Justice to consider whether to modify or enact federal laws and to obtain support within the Congress, the Executive, and the public at large for any such legislation that may be warranted. This is a well-recognized basis for authorizing Congress to conduct investigations and obtain Executive Branch information, as the Supreme Court stated in McGrain v. Daugherty,[93] and as Judge Bates recently reaffirmed in Committee on the Judiciary v. Miers, et al.[94]

IV. Mr. Rove's Claim of Executive Privilege-Based Immunity From Subpoena Is Not Legally Valid

According to the letters received from Mr. Rove's counsel, particularly his letters of July 1 and July 9, 2008, Mr. Rove's refusal to appear and testify before the CAL Subcommittee on July 10 as required by subpoena was based on claims that "Executive Privilege confers upon him immunity" from even appearing to testify–that "as a [former] close advisor to the President, whose testimony is sought in connection with his official duties in that capacity, he is immune from compelled Congressional testimony."[95]

These claims were rejected by CAL Subcommittee Chair Sánchez in a ruling that was upheld by a 7-1 vote of the CAL Subcommittee on July 10, 2008. For a number of reasons, as explained in Chair Sánchez' ruling and below, those claims are legally invalid.

First, no executive privilege claim was even properly asserted. The CAL Subcommittee did not receive a written statement directly from the

---

[92] Watkins v. United States, 354 U.S. 178, 187 (1957).

[93] 273 U.S. 135, 174 (1927).

[94] *See* Memorandum Opinion at 36, 39-41.

[95] Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary, (July 1, 2008) at 1; Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary, (July 9, 2008) at 1.

President, let alone anyone at the White House on the President's behalf, asserting Executive Privilege, or claiming that Mr. Rove is immune in this instance from testifying before us. Nor did any White House official attend the July 10, 2008, hearing to raise those claims on behalf of the President. The most recent letter from Mr. Rove's lawyer simply relies on a July 9, 2008, letter to him from the White House counsel directing that Mr. Rove should disobey the subpoena and refuse to appear at the CAL Subcommittee hearing.

That July 9, 2008, letter from White House Counsel Fred Fielding claims that Mr. Rove "is constitutionally immune from compelled congressional testimony about matters that arose during his or her tenure as a presidential aide and that relate to his or her official duties."[96] As discussed in greater detail below, no general freestanding immunity exists for former presidential advisers, and thus the proper course is to recognize claims of privilege only when properly asserted in response to specific questions during a particular hearing.

The courts have stated that a personal assertion of executive privilege by the President is legally required for the privilege claim to be valid. For instance, the District Court of the District of Columbia made clear in the Shultz case that even a statement from a White House counsel that he is authorized to invoke executive privilege is "wholly insufficient to activate a formal claim of executive privilege," and that such a claim must be made by the "President, as head of the 'agency,' the White House."[97]

It should also be noted that even a formal claim of privilege, by itself, is not enough to prevent a private party from complying with a Congressional subpoena. In cases where a congressional committee rules that asserted claims of executive privilege are invalid, the Executive Branch's only

---

[96]Letter from Fred Fielding, Counsel to the President, to Robert Luskin, counsel to Karl Rove (July 9, 2008).

[97]Center on Corporate Responsibility v. Shultz, 368 F. Supp. 863, 872-73 (D.D.C. 1973); *see also* United States v. Burr, 25 F. Cas. 30, 192 (C.C.Va.1807) (ruling by Chief Justice Marshall that President Jefferson had to personally identify the passages he deemed confidential and could not leave this determination to the U.S. Attorney).

recourse beyond further negotiation is to seek a court order to prevent the private party from testifying (or producing documents). This is because neither the Constitution nor any federal statute confers authority upon the President to order private citizens not to comply with Congressional subpoenas.

The Executive Branch recognized this in United States v. AT&T, where the Ford Administration sued to enjoin AT&T, a private party, from complying with a subpoena from a House committee. AT&T recognized that despite the White House's adamant requests that it not comply with its subpoena, it nevertheless was "obligated to disregard those instructions and to comply with the subpoena."[98] The President had no freestanding authority to prevent AT&T from complying. The same is true here.

Second, there is no proper legal basis for Mr. Rove's refusal even to appear before the Subcommittee as required by subpoena. No court has ever held that presidential advisers are immune from compulsory process – in any setting. To the contrary, Judge Bates has recently ruled on this very question in the Miers case, unambiguously affirming Ms. Sánchez's rejection of Mr. Rove's claim of immunity. Judge Bates explained:

> The Executive cannot identify a single judicial opinion that recognizes absolute immunity for senior presidential advisors in this or any other context. That simple yet critical fact bears repeating: the asserted absolute immunity claim here is entirely unsupported by existing case law. In fact, there is Supreme Court authority that is all but conclusive on this question and that powerfully suggests that such advisors do not enjoy absolute immunity. The Court therefore rejects the Executive's claim of absolute immunity for senior presidential aides.[99]

---

[98]United States v. AT&T, 551 F.2d 384, 387 (D.C. Cir. 1976)

[99]Memorandum Opinion at 78; *see also id.* at 83 ("there is no judicial support whatsoever for the Executive's claim of absolute immunity") (original emphasis); Memorandum Opinion dated August 26, 2008, at 4, in Committee on the Judiciary v. Miers, et al, Civil Action No. 08-0409 (JDB) ("Without any supporting judicial precedent – and, indeed, in the face of Supreme Court case law that effectively forecloses the basis for the assertion of absolute immunity here – it is

Judge Bates' ruling was correct, and indeed was compelled by precedent. Since 1974, when the Supreme Court rejected President Nixon's claim of absolute presidential privilege in United States v. Nixon, it has been clear that President's executive privilege is merely qualified, and not absolute.[100] And the Supreme Court has expressly recognized that presidential advisers, including members of the President's cabinet, do not even enjoy the same protections as the President himself.[101] Neither Mr. Rove's lawyer, nor Mr. Fielding, nor the Office of Legal Counsel (OLC) at the Justice Department has cited a single court decision to undermine these well-settled principles. Therefore, there is no absolute immunity from subpoena; and the proper course of action for Mr. Rove is to attend the hearing for which he has been summoned, at which time he may, if expressly authorized by the President, assert executive privilege in response to specific questions posed by the Subcommittee.

Assuming that Mr. Fielding's July 9, 2008 letter to Mr. Luskin – and its attached materials from the Justice Department's OLC – sets out the case for Mr. Rove's claim for immunity before the CAL Subcommittee, the arguments presented therein are wholly without merit. Most notably, both the letter and its accompanying materials from OLC fail to cite a single court decision, nor could they, in support of Mr. Rove's contention that a former White House employee or other witness under federal subpoena may simply refuse to show up to a congressional hearing.

To the contrary, the courts have made clear that no present or former government official is so above the law that he or she may completely disregard a legal directive such as the Committee's subpoena. As the Supreme Court explained more than a century ago, "[n]o man in this country is so high that he is above the law," and "[a]ll the officers of the government,

---

difficult to see how the Executive can demonstrate that it has a substantial likelihood of success on appeal, or even that a serious legal question is presented.").

[100] United States v. Nixon, 418 U.S. 683, 706 (1974).

[101] Harlow v. Fitzgerald, 457 U.S. 800, 809 (1982); Butz v. Economou, 438 U.S. 478, 505-506 (1978).

from the highest to the lowest, are creatures of the law and are bound to obey it."[102]

Even beyond the case law, the reasoning utilized in the OLC materials, authored by Principal Deputy Assistant Attorney General Steven G. Bradbury, on its own terms, has no application to former presidential advisers such as Mr. Rove. Each of the prior OLC opinions on which Mr. Bradbury relies, including the 1999 Opinion issued by Attorney General Janet Reno, covers only current White House advisers, not former advisers like Mr. Rove. This distinction is crucial, as all of the arguments purportedly supporting absolute immunity for current presidential advisers simply do not apply to former advisers. For example, the primary OLC memorandum from which all subsequent adviser-immunity opinions have been derived, authored by Chief Justice and then-OLC head William H. Rehnquist, reaches only the "tentative and sketchy" conclusion that current advisers are "absolutely immune from testimonial compulsion by congressional committee[s]" because they must be "presumptively available to the President 24 hours a day, and the necessity of [appearing before Congress or a court] could impair that ability."[103] The same rationale on its face does not apply to former advisers, and thus there is no support for Mr. Bradbury's claim that former advisers are immune from Congressional process. And even Mr. Rehnquist himself acknowledged that when White House advisers wish to assert executive privilege, they must first appear before Congress and then assert the privilege.[104]

---

[102]United States v. Lee, 106 U.S. 196, 220 (1882). In addition to U.S. v. Nixon, *supra, see also* Clinton v. Jones, 520 U.S. 681, 691-2 (1997).

[103]Memorandum for the Honorable John D. Ehrlichman from William H. Rehnquist (Feb. 5, 1971) at 7. The 1999 OLC opinion referred to by Mr. Bradbury similarly covers only current advisers and acknowledges that a court might well not agree with its conclusions. *See* Assertion of Executive Privilege With Respect to Clemency Decision, 23 Op. O.L.C. 1 (1999)(Opinion of Attorney General Janet Reno).

[104]*See U.S. Government Information Policies and Practices – The Pentagon Papers, Hearing Before the Subcomm. On Foreign Operations and Government Information of the House Committee on Government Operations,* 92d Cong., 1st Sess. 385 (1971) (testimony of William H. Rehnquist)

The 1999 Reno Opinion also reflects doubt about the matter, expressly noting that a court might not agree with the arguments for immunity and suggesting that the matter might in fact be resolved through some sort of balancing.[105] Those doubts are most obviously demonstrated by the fact that, in the end, the Clinton White House did not stand upon the immunity argument made in this opinion but instead, on several occasions, allowed its current and former White House Counsel to testify.[106]

Moreover, the fact that OLC has opined that former advisers are absolutely immune from Congressional subpoena is not entitled to deference from Congress. Such an opinion, unlike that issued by a court, is not an authoritative formulation of the law. Rather, it is only the Executive Branch's view of the law, and is entitled only to the weight that its inherent merit warrants. In this instance, it is clear that Mr. Bradbury's memorandum was ill-conceived, and its conclusions were properly rejected by the Subcommittee and the full Committee.

The White House's argument in favor of absolute immunity for Mr. Rove on these matters is remarkable for an additional reason. According to Mr. Fielding's July 9, 2008, letter, the rationale for immunity rests in part on the claim that the matters covered by the subpoena relate to Mr. Rove's "official duties." If that assertion is to be credited, then apparently this Administration believes that Mr. Rove's official duties included the alleged pressuring of the Justice Department to criminally prosecute a political opponent of the President's party, and also included ensuring the partisan political loyalty of the U.S. Attorney corps and helping force politically unhelpful U.S. Attorneys to resign. While it is true that Mr. Rove denies at least some of these allegations, the White House claim that these alleged actions would fall within his "official duties" is disturbing. On the other hand, if the White House does not believe that such interference in the Department of Justice's prosecution function was an official duty of Mr. Rove, then either the claim of immunity fails on the Administration's own terms (because they claim the immunity applies only where official

---

[105] *Assertion of Executive Privilege With Respect To Clemency Decision*, Opinion of Attorney General Janet Reno, September 16, 1999.

[106] Fisher, *Congressional Access to Information*, 52 Duke LJ 323, 346-47 (2002).

duties are involved) or they are actually asserting a total immunity from compelled testimony for Presidential aides on any subject and regardless of any nexus to the individual's White House responsibilities. That form of immunity, of course, would be even greater than that held by the President, as the Clinton v. Jones case makes clear, and should be rejected as legally unsupportable.

Third, the claims of absolute immunity directly contradict the conduct of this and past Administrations with respect to White House officials appearing before Congress. Only recently, current Vice-Presidential chief of staff David Addington appeared and testified before the House Judiciary Committee pursuant to subpoena, and former White House Press Secretary Scott McClellan appeared and testified without even receiving a subpoena. In 2007, former White House officials Sara Taylor and Scott Jennings testified concerning the U.S. Attorney firings before the Senate Judiciary Committee pursuant to subpoena. Prior to this Administration, both present and former White House officials have testified before Congress numerous times; a Congressional Research Service study documents some 74 instances where White House advisers have testified before Congress since World War II, many of them pursuant to a subpoena.[107]

This White House's asserted right to secrecy goes beyond even the claims of Richard Nixon, who initially refused to allow his White House Counsel, John Dean, to testify before Congress, on almost exactly the same grounds being asserted now, but then agreed that Mr. Dean and other White House officials could testify.[108]

Fourth, the claims of absolute immunity and the refusal to appear pursuant to subpoena and to answer questions from the Subcommittee directly contradict the behavior of Mr. Rove and his attorney themselves. When Mr. Rove's attorney was asked earlier this year by a media representative whether Mr. Rove would testify before Congress in response

---

[107]Harold C. Relyea & Todd B. Tatelman, *Presidential Advisers' Testimony Before Congressional Committees: An Overview*, CRS Report for Congress, RL 31351 (Apr. 10, 2007).

[108]L. Fisher, The Politics of Executive Privilege, at 59-60 (2004).

to a subpoena on the Siegelman matter, he responded "sure" by e-mail.[109] In addition, unlike Harriet Miers, Mr. Rove has spoken extensively in the media on the very subject the Subcommittee seeks to question him about: allegations regarding his role in the alleged politicization of the Justice Department during this Administration, including the alleged improper, politically-motivated prosecution of prominent Democrats like former Governor Don Siegelman and the unprecedented forced resignations of nine U.S. Attorneys in 2006. In addition, if Mr. Rove and his attorney are willing to submit written answers to questions, as they have when asked by Representative Smith, Mr. Rove should also be willing to answer oral questions with a transcript. It is unacceptable for former White House personnel to speak publicly about matters and answer written questions as they choose but then to refuse to testify before Congress under oath and subject to cross-examination on the very same matters, relying on claims of alleged confidentiality.

Fifth, and finally, especially to the extent that Executive Privilege is the basis for the claim of immunity as to Mr. Rove, the White House has failed to demonstrate that the information the Committee seeks from him under the subpoena is covered by that privilege. There is no expectation that Mr. Rove would reveal any communications to or from the President himself, which is the essential basis of the presidential communications privilege.

In fact, on June 28, 2007, a senior White House official at an authorized background briefing specifically stated that the President had "no personal involvement" in receiving advice about the forced resignations of the U.S. Attorneys or in approving or adjusting the list containing their names. The Committee seeks information from Mr. Rove about his own communications and his own involvement in the process of the forced resignations of U.S. Attorneys and related aspects of the politicization of the Justice Department.

Mr. Rove nevertheless apparently claims that executive privilege applies or confers immunity upon him, asserting that the privilege also covers

---

[109]Transcript of Verdict with Dan Abrams, MSNBC, May 22, 2008, available at http://www.msnbc.msn.com/id/24792353/.

testimony by White House staff who advise the President, apparently based on the Espy decision.[110] The Espy court, however, made clear that while the presidential communications privilege may cover "communications made by presidential advisers," such communications are only within the realm of Executive Privilege when they are undertaken "in the course of preparing advice for the President."[111] But the White House has maintained that the President never received any advice on, and was not himself involved in, the forced resignations of the U.S. Attorneys. And there has been no suggestion that the President was personally involved in the Siegelman matter. Thus, the presidential communications privilege would not seem to apply here.

Moreover, whether such communications would even fall under the presidential communications privilege in the context of a congressional inquiry is far from certain.[112] The Supreme Court in Nixon and the Court of Appeals in Espy both expressly noted that different balancing considerations would apply when the communications at issue were sought by Congress on behalf of the American people. It seems odd that these courts would rule that a congressional investigation, authorized under the Constitution, carries less weight than a civil or criminal trial. More appropriately, such an investigation should be entitled to the greatest deference by the courts, as Congress is tasked specifically with overseeing and legislating on matters concerning the workings of the Executive Branch, and specifically here, the proper functioning of the Justice Department.

For all the foregoing reasons, Mr. Rove's claims of immunity are not legally valid, and his refusal to comply with the subpoena and appear at this hearing to answer questions cannot be properly justified.

---

[110] In re Sealed Case, 121 F.3d 729, 752 (D.C. Cir. 1997).

[111] *Id.*

[112] *Id.* at 753.

V. Conclusion

The House should cite Mr. Rove for Contempt of Congress and pursue other legal remedies to enforce the outstanding subpoena as appropriate.

JOHN CONYERS, JR.
LINDA T. SÁNCHEZ.

MINORITY VIEWS

On the resolution and report recommending to the House of Representatives that former White House Counsel Karl C. Rove be cited for contempt of Congress

> "I have never communicated, either directly or indirectly, with Justice Department or Alabama officials about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, or about any other matter related to his case, nor have I asked any other individual to communicate about these matters on my behalf. I have never attempted, either directly or indirectly, to influence these matters."
>
> Karl C. Rove, answers provided to
> House Judiciary Committee Ranking Member Lamar Smith[1]

I. Introduction

In the continuing investigation by the House Judiciary Committee into allegations that the Department of Justice was "politicized" by the Bush Administration, the House is once again asked to cite a former senior advisor to the President with contempt of Congress. In 2007, that aide was former Counsel to the President Harriet Miers. This year, it is former Deputy Chief of Staff to the President Karl Rove.

Long ago, evidence about the U.S. Attorney dismissals that touched off the investigation demonstrated that, whatever else may have happened, White House aides had not sought to dismiss U.S. attorneys for improper partisan purposes. The key Justice Department witnesses, for example, offered direct testimony that not Karl Rove, not Harriet Miers, and not any other White House aide had inquired about a U.S. Attorney's dismissal for any reason other than ordinary performance concerns or the simple desire that someone else might serve. The Committee learned, moreover, that Mr. Rove had expressly urged at the outset of the inquiry that the Department of Justice explain to Congress precisely what it did and why. This approach appears to belie any notion that Mr. Rove intended to cover up the matter or thought there was anything that needed to be covered up.

In light of this and other evidence, an honest assessment of the facts should have brought to an end long ago the Committee's investigation of the White House's role in the U.S. Attorneys' dismissals. Nothing we have found has suggested that Congress has needed to continue to devote its limited resources to this matter, particularly since we have long since repealed the PATRIOT Act's expansion of the Attorney General's authority to make unconfirmed interim U.S. Attorney appointments in the wake of a U.S. Attorney's departure.

---

[1] Answers to House Judiciary Committee Ranking Member Lamar Smith from Karl C. Rove Regarding Allegations of Selective Prosecution in the Case of Former Alabama Governor Donald E. Siegelman at 1 (July 22, 2008) ("*Rove Answers*," attached at Appendix B).

Regrettably, the absence of evidence after more than a year of investigation has not stopped the majority from continuing with its transparently partisan investigation. When it failed to uncover facts sufficient to support the Committee's continued investigation of the U.S. Attorneys' dismissals, the majority simply cast about for other points of inquiry that might serve its political ends.

In the case of Karl Rove, the majority settled on the pursuit of allegations that Mr. Rove had instigated and orchestrated the investigation and prosecution of former Alabama governor Don Siegelman. These allegations were baseless, and Mr. Rove has answered them definitively, as the quote at the outset of these views reflects. Further evidence refuting the allegations has quickly piled up from other sources as well. Some of this evidence has come from Don Siegelman himself. And ringing evidence refuting the allegations has come in from the career federal prosecutors who led the Siegelman prosecution.

Rather than duly account for this evidence, the majority has studiously ignored it. And rather than call it a day on its hunt for Mr. Rove, the majority, at a politically opportune moment, chose to subpoena Mr. Rove for a "show" hearing. The majority did not call Mr. Rove's accusers, Dana Jill Simpson and Don Siegelman. It did not call the career prosecutors, who have emphatically denied that they received any political pressure in the case. It did not call any of the other witnesses who have refuted Siegelman's and Simpson's claims. Finally, it did not even take up Mr. Rove's offer of voluntary written information or an informal interview. That offer was taken up only by the Committee minority, which asked for and obtained comprehensive written information.

These facts point to one conclusion. The hearing was not called to get to the truth. It was called to administer a public whipping to Karl Rove – or better yet, to set him up for a criminal contempt citation. The majority all along knew that the President would prevent Mr. Rove's appearance through the assertion of testimonial immunity and executive privilege.

As the majority expected, Mr. Rove did not appear for his modern-day Salem witch trial. The majority thus proceeded with his hearing before an empty chair; "over-ruled" the presidential assertions of immunity and privilege that supported his non-appearance; and rushed through committee a resolution and report of contempt against him. The Committee majority now asks that the full House approve this resolution and report and refer the matter to the U.S. Attorney for prosecution prior to the expiration of this Congress and the Bush Administration.

Has the majority's pursuit of Karl Rove produced anything legitimate for this body and the American people? Clearly, the answer is "No." It is plain that the majority, for purely partisan ends, seeks simply to propel a public figure toward the criminal docket and to prolong through the election season a scandal that already has damaged the reputation of the Department of Justice more than the facts support. The majority's

actions demean the House, damage the Executive, defame the Department of Justice, and wrongly dangle an individual before the doors of the criminal justice system. This is a profound perversion of Congress's oversight authority, and it is emphatically beneath this great body. We urge all Members of the House to vote against the resolution and report recommending that Karl Rove be held in contempt of Congress.

II. The Committee Majority Subpoenaed Karl Rove and Resolved To Hold Him in Contempt for Partisan Reasons.

The renowned judge Learned Hand once remarked that "[o]ur procedure has been always haunted by the ghost of the innocent man convicted." U.S. v. Garsson, 291 F. 646, 649 (D.N.Y. 1923). To protect the accused from unfair persecution – including partisan persecution – the judiciary enforces a substantial edifice of due process protections throughout our criminal proceedings. Indeed, the Committee majority has sought all manner of procedural protections for enemy combatants detained overseas.

By contrast, the Committee majority has not afforded even the remotest semblance of "due process" to Karl Rove as it has sought to maneuver him towards contempt liability. Nothing could expose this better than the majority's trumped-up but relentless pursuit of Mr. Rove in the Siegelman matter. While there is no credible basis to insist on testimony from Mr. Rove, the majority seeks testimony *only* from Mr. Rove, and *only* to provoke a partisan spectacle and exact a partisan pound of flesh.

It is critical to understand this at the outset. A congressional subpoena is no trifling matter. It is an institutional assertion of congressional authority. It ought not to be lightly asserted, just as it ought not to be lightly ignored. Important institutional interests come to bear when a committee considers either a subpoena's issuance or its enforcement.

Accordingly, at the time of issuance or enforcement, we should consider seriously whether we have sufficiently pursued other means of obtaining information, be it from the object of the subpoena or from other parties. Put differently, before we put our interests and the answering party's on the line, we should consider whether our need to obtain information from that party is sufficiently clear that we should issue a subpoena to him or pursue such a subpoena's enforcement.

When the answering party is a White House official, we should be particularly careful. As a matter of comity, we should not underestimate the importance to the Executive Branch of its institutional prerogatives over information. We also should not underestimate the likelihood that the Executive will assert those prerogatives, refuse to answer a subpoena, and dispute the subpoena's enforcement. For example, as the majority well knows, the Committee can overcome an assertion of executive privilege only by showing that it has a "demonstrated, specific need" for the information subpoenaed. United States v. Nixon, 418 U.S. 706, 708 (1974); In re Sealed Case, 121 F.3d at 729, 753–55 (D.C. Cir. 1997); Senate Select Committee on Presidential Campaign Activities v. Nixon, 498 F.2d 725, 731 (D.C. Cir. 1974) (Senate Select Comm.

II) (holding that the information must be "demonstrably critical to the responsible fulfillment of the Committee's functions" to overcome executive privilege). It is not enough that the Committee desires information from the White House, or may one day have a sufficient need. On the contrary, the law requires that the Committee have a current, "demonstrated, specific need" in order to overcome a presidential claim of executive privilege. See In re Sealed Case, 121 F.3d at 760 (denying the grand jury's need for the privileged material "at this stage"); Senate Select Comm. II, 498 F.2d at 732 (denying the Committee's need for the privileged material in light of the Committee's "present sense need for the materials subpoenaed") (emphasis added).

As the D.C. Circuit has observed, moreover, in applying the "demonstrated, specific need" standard, "[e]fforts should first be made to determine whether sufficient evidence can be obtained elsewhere, and the subpoena's proponent should be prepared to detail these efforts and explain why evidence covered by the presidential privilege is still needed." In re Sealed Case, 121 F.3d at 755. "To overcome the presidential privilege, it is necessary to demonstrate with specificity why it is likely that the subpoenaed materials contain important evidence and why this evidence, or equivalent evidence, is not practically available from another source." Id.; accord Nixon v. Sirica, 487 F.2d 700, 717 (D.C. Cir. 1973) (holding that the President's claim of privilege was overcome only "in face of the uniquely powerful showing made by the Special Prosecutor . . . that the subpoenaed tapes contain evidence peculiarly necessary to the carrying out of [the grand jury's] vital function – evidence for which no effective substitute is available") (emphasis added).

Our views of the relevant considerations, therefore, are consonant with the views of the courts. Out of comity for our sister branch in our constitutional order, Congress should seek information from the White House only after other sources are approached, and then only if the information from those other sources shows a genuine need.

In the instant matter, the application of these considerations shows that the Committee majority's subpoena of Mr. Rove was improvident and counsel clearly against the pursuit of contempt to enforce the subpoena. In ignoring considerations of basic fairness to Mr. Rove, the majority has failed to pursue other, readily available means of obtaining answers to its questions. Those means include both the genuine consideration of information we already have and the exploration of information from other, obvious witnesses. Most particularly, those means include giving due credit to what information Mr. Rove has been able to offer voluntarily in the Siegelman matter, as well as what information the Department of Justice's career staff have offered.

Were it not for the majority's glaring failures, we might approach the question of contempt differently, given Congress' important institutional interest in assuring respect for its subpoena power. We take the case as it is, however. We cannot ignore these failures. Neither, we suspect, would the courts. As a result, we cannot support the majority. Indeed, we are concerned that to pursue contempt on the instant record may only serve to erode the respect for and effectiveness of our oversight and subpoena powers.

A. The Siegelman Matter

Donald E. Siegelman was elected governor of Alabama in 1998. In 2001, the U.S. Attorney's Office for the Middle District of Alabama began investigating Governor Siegelman in connection with the rigging of a state Medicaid contract.

Despite being under investigation, Siegelman ran for re-election in 2002 against former Congressman Bob Riley. The race came within 3,000 votes, which resulted in a heated recount challenge (Alabama law did not at the time provide for automatic recounts of close elections). On November 18, 2002, Siegelman conceded the election to Riley.

According to the Committee majority, there is a question as to whether Mr. Rove "directly or indirectly discussed the possibility of prosecuting Don Siegelman with either the Justice Department or Alabama Republicans."[2] In a staff report issued on April 7, 2008, the majority asserted generally that "[t]here 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."[3]

According to the report's more specific allegations, "[s]everal 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."[4] The report also asserted that this same testimony indicates that "decisions regarding the Siegelman case were being made at the very highest levels of the Administration."[5] And, according to the report, this testimony "in turn corroborates the sworn statements of a Republican attorney" – one Dana Jill Simpson – "that the son of the Republican Governor of Alabama told her that Karl Rove had pressed the Department to bring charges."[6] The report thus concluded that "[t]he issue of the involvement of Mr. Rove or others at the White House in the Siegelman case [thus] remains an important open question."[7]

The majority's "theory" in essence boils down to this: first, that some witnesses have said that the Siegelman investigation was coming to a close until *some* Washington authorities inserted themselves into the picture; and, second, that Ms. Simpson's account points to Karl Rove as the font of Washington involvement. The importance of Ms.

---

[2] *Allegations of Selective Prosecution in Our Federal Criminal Justice System* at 10 (April 17, 2008) (*Allegations of Selective Prosecution*) (*available at* http://judiciary.house.gov/Media/PDFS/SelProsReport080417.pdf); *see also* Memorandum to Members, Committee on the Judiciary, from John Conyers, Jr., Chairman re: Full Committee Markup at 10 (July 29, 2008) ("*Majority Markup Memo*").
[3] *Allegations of Selective Prosecution* at ii.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*

Simpson's testimony to this "theory" cannot be overstated – Ms. Simpson is the *only* source of the allegation that Mr. Rove was involved in the supposed conspiracy to influence the Siegelman case.

Ms. Simpson's linch-pin allegations have gone untested by the majority and the national media. When they are tested, they are demonstrably incredible. Below, we present the important facts of this matter and offer the analysis supporting our conclusion that the Siegelman/Rove scandal is a hoax, inherently incapable of supporting the majority's insistence on subpoenaing Mr. Rove and enforcing the subpoena through contempt proceedings.

This analysis rests, in the first instance, on the credible evidence in the Committee's possession. This evidence, unlike the majority's "evidence," is in fact extensive. It includes, first and foremost, the official statements of Louis V. Franklin, Sr., the Acting U.S. Attorney and career federal prosecutor who led the Siegelman prosecution. Mr. Franklin has *specifically, emphatically, and consistently* denied that Karl Rove had anything to do with the decision to prosecute Don Siegelman. He has said repeatedly that the decision to prosecute was *solely his*, and that it was the fruit of efforts by the Department's *career* prosecutorial team.

Second, but no less important, the real evidence also includes Karl Rove's corresponding and specific denial of Ms. Simpson's allegations. Mr. Rove has comprehensively denied – subject to criminal liability under 18 U.S.C. sec. 1001 – that he attempted in any way to influence the Siegelman prosecution or that he even knew Jill Simpson.

The real evidence also includes evidence from the other alleged "conspirators" against Siegelman. All of these individuals deny that the "events" at the heart of Ms. Simpson's allegations ever took place. Indeed, even Don Siegelman refutes "information" that Ms. Simpson has offered.

Finally, our analysis rests on the shifting, suspicious and obviously outlandish nature of Ms. Simpson's "evidence." Our objective analysis of Ms. Simpson's allegations and the credible evidence we have points us to one conclusion – if anyone involved in this matter might merit prosecution for anything, it would appear to be Ms. Simpson, for misleading Congress during her interview with Committee staff in September 2007, in violation of 18 U.S.C. sec. 1001.

It should be plain, therefore, why we cannot support the majority's effort to hold Mr. Rove in contempt. There simply is no sufficient need to put him to the test of a congressional hearing, much less to hold him in contempt for obedience to the White House's assertion of executive privilege and testimonial immunity. And it is abundantly clear that there is no need to do so when not a single witness unburdened by that assertion has been called for a hearing before the Committee, so that the Committee can build a prior case for calling Mr. Rove and insisting on his testimony.

1. Governor Siegelman's Investigation and Prosecution

In July 2007, Acting U.S. Attorney Franklin, speaking for the Middle District of Alabama, set forth his summary of the facts concerning the investigation and prosecution of Governor Siegelman. Mr. Franklin's explanation is the appropriate foundation for any analysis of this matter, for several reasons. First, Mr. Franklin and the members of his Middle District prosecutorial team are *the* critical first-hand witnesses regarding this matter. Second, we find no need to improve upon the District's recitation, which is remarkably succinct and straightforward. Third – and perhaps most important – this approach is consistent with the entire point of the Committee's investigation. The ostensible purpose of the investigation is to assure that politics emanating from Washington do not improperly affect the activities of local U.S. Attorneys' offices. We should thus be exceedingly careful to review and credit the statements of the Middle District's career officials. These statements have been made pointedly to blow the whistle on this baseless, post-hoc attempt by Washington Democratic politicians and the media to convert the Siegelman prosecution into a political football. They also highlight the potential this intense and contrived political spotlight holds for chilling bona fide prosecutions of political figures.

The Middle District's July 2007 recitation of the facts of the Siegelman prosecution reads as follows:

> *"The Course of the Investigation*
>
> "On June 6, 2007, Louis Franklin, a 15+ year prosecutor and Acting U.S. Attorney in the Siegelman/Scrushy case, issued a statement that has been universally ignored by the national media. In his statement, he confirmed that Karl Rove had no role whatsoever in bringing about the investigation or prosecution of former Governor Don Siegelman. He has never met or spoken with Mr. Rove. The decision to bring charges was made by Mr. Franklin in conjunction with the Department of Justice's Public Integrity Section and the Alabama Attorney General's Office. His decisions were based solely upon the evidence in the case that former Governor Siegelman and Mr. Scrushy committed serious federal crimes.
>
> "Mr. Franklin's decision to prosecute Don Siegelman and Richard Scrushy was based upon evidence uncovered by federal and state agents, as well as by a federal special grand jury. The investigation was actually precipitated by evidence uncovered by a Mobile investigative reporter, Eddie Curran, and a series of stories written by him. The investigation began shortly after an article appeared in the Mobile Press-Register alleging an improper connection between then-Governor Siegelman and financial supporter/businessman/lobbyist, Clayton "Lanny" Young, months before Leura Canary was appointed as the U.S. Attorney for the Middle District of Alabama (MDAL).

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

"Ms. Canary became U.S. Attorney in September 2001. In May 2002, very early in the investigation, and before any significant decisions in the case were made, U.S. Attorney Leura Canary completely recused herself from the Siegelman matter, in response to unfounded accusations that her husband's Republican ties created a conflict of interest. Although Department of Justice officials reviewed the matter and opined that no conflict, actual or apparent, existed, Canary voluntarily recused herself anyway to avoid even an appearance of impropriety.

"Thereafter, Mr. Franklin was appointed Acting U.S. Attorney in the case, upon Charles Niven's retirement in January 2003. After his appointment, Mr. Franklin made all decisions in the case on behalf of the office. Ms. Canary had no involvement in the case, directly or indirectly, and made no decisions in regards to the investigation or prosecution after her recusal. Immediately following Ms. Canary's recusal, appropriate steps were taken to ensure the integrity of the recusal, including establishing a "firewall" and moving all documents relating to the investigation to an off-site location. The off-site became the nerve center for most work done on the case, including but not limited to witness interviews and the receipt, review, and discussion of evidence gathered during the investigation.

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

"Armed with cooperation agreements from Bailey, Young and Kirsch, the investigation continued. In June 2004, a special grand jury was convened at the request of the prosecution team to further assist in the investigation. An indictment was returned under seal against Mr. Siegelman and ex-HealthSouth CEO Richard Scrushy on May 17, 2005.

The first superseding indictment was filed and made public on October 26, 2005, charging Siegelman, Scrushy, Siegelman's former Chief of Staff Paul Hamrick, and Siegelman's Transportation Director Gary Mack Roberts. *Immediately after the indictment was announced, Messrs. Scrushy and Siegelman publicly denounced the indictment and personally attacked the prosecutors. Those attacks have continued throughout the case and have now escalated to charges that Karl Rove had something to do with this investigation or prosecution. The charges are simply untrue. The indictment was solely the product of evidence uncovered through an investigation that began before Leura Canary became U.S. attorney and continued for three years after she recused herself.*

"During the investigation, Mr. Franklin consulted with career prosecutors (i.e., nonpolitical appointees) in the Public Integrity Section of Main Justice to obtain guidance on the prosecution of the former Governor, but he alone maintained the decision-making authority to say yea or nay as to whether or not the U.S. Attorney's Office for the MDAL would proceed with the prosecution. *Contrary to how the prosecution is portrayed in various newspaper articles and editorials, rather than the U.S. Department of Justice pushing the MDAL to move forward with the prosecution of former Governor Siegelman, the push has always come from the Middle District's U.S. Attorney's Office and has been spearheaded by Mr. Franklin as the Acting U.S. Attorney in the case. His sole motivation for pushing the prosecution was a firmly held belief, supported by overwhelming evidence and the law, that former Governor Siegelman had broken the law and traded his public office for personal and political favors. Ultimately, a jury of former Governor Siegelman's peers, consisting of men and women, African-Americans and Caucasians, agreed and convicted the former Governor of conspiracy, honest services mail fraud, accepting bribes, and obstructing justice, and Mr. Scrushy of conspiracy, honest services mail fraud, and bribery.*

* * *

"I am a career Assistant U.S. Attorney in the Middle District of Alabama. I have served under both Democratic and Republican appointees. I take my role as a government prosecutor and my ethical obligations as a lawyer very seriously. I value my integrity above all else. *I would never pursue a prosecution for political reasons, nor would I bring any prosecution not warranted by the evidence or the law. That simply did not happen here, no matter what anyone prints.*"[8]

---

[8] Department of Justice, Acting United States Attorney Louis V. Franklin, Sr., *Middle District of Alabama's Response to Errors in Siegelman/Scrushy National News Accounts* at 5-7, 3 (July 18, 2007) ("*Response to Errors,*" attached at Appendix D) (emphases added; citations omitted).

This is, obviously, a resounding affirmation of the integrity of the Siegelman prosecution, delivered from the *very* career official the investigation pretends to protect. But Mr. Franklin did not stop with his explanation of the impartiality and merit of the prosecution he led. He also offered several important pieces of information about Ms. Simpson and her allegations. Those included that:

- "Ms. Simpson's affidavit may have been motivated by her relationship with a disappointed bidder who lost out on a $7.1 million state contract awarded by Governor Riley to a competitor with a lower bid;"

- "Ms. Simpson first told Mr. Scrushy's lawyers of the alleged incidents made the basis of her affidavit in February 2007, and she prepared the affidavit at their urging, meeting with Scrushy and his lawyers on several occasions during the months before she signed her affidavit on May 21, 2007;" and

- "Ms. Simpson's affidavit ha[d] not been filed by either Mr. Siegelman or Mr. Scrushy in the actual court case, the allegations of selective prosecution having been raised by Mr. Siegelman solely in the media".[9]

This is, moreover, not all of the information in the July 2007 statement. A full copy of the statement is reproduced in the appendices to these views. We recommend it in its entirety to anyone considering this matter.[10]

The July 2007 statement, furthermore, is not the only statement Mr. Franklin has released in this affair. On the contrary, Mr. Franklin also released a separate statement declaring that:

> I can . . . state *with absolute certainty* that . . . Karl Rove had no role whatsoever in bringing about the investigation or prosecution of former Governor Don Siegelman. It is *intellectually dishonest* to even suggest that Mr. Rove influenced or had any input into the decision to investigate or prosecute Don Siegelman. That decision was made by me, Louis V. Franklin, Sr., as the Acting U.S. Attorney in the case, in conjunction with the Department of Justice's Public Integrity Section and the Alabama Attorney General's Office. Each office dedicated both human and financial resources. Our decision was based solely upon evidence in the case, evidence that unequivocally established that former Governor Siegelman committed bribery, conspiracy, mail fraud, obstruction of justice, and other serious federal crimes.[11]

---

[9] *Id.* at 2

[10] *See* Appendix D.

[11] Department of Justice, Acting United States Attorney Louis V. Franklin, Sr., *Statement of Louis V. Franklin, Sr., Acting U.S. Attorney in the Siegelman/Scrushy Prosecution*, at 1 (undated) (emphases added) (attached at Appendix E).

In a congressional investigation into whether partisan Washington politics have influenced local federal prosecutions, when local, career prosecutors present such ringing refutations of allegations that a prosecution of *theirs* was interfered with, congressional investigators *must* take serious note. Many would say that such evidence should be sufficient to bring the matter to a close. If questions remain, however, the *first* thing to do should be to put those questions to those same career officials.

Curiously, the majority of this Committee has strenuously avoided that obvious course. It is perhaps precisely that which reveals the majority's pursuit of the Siegelman case for what it is – a contrived campaign to burn Karl Rove at the partisan witch-hunter's stake. Indeed, the majority's withering hypocrisy in ignoring career prosecutors for partisan ends reveals this term's entire investigation of the White House and the Department of Justice for what it has been – not a genuine attempt to protect the Department, but a partisan attempt to smear the Bush Administration.

What are we to say about this? Again, the Middle District's career staff has put it well:

> "It is greatly disturbing that the [real facts of the matter] do not appear in national newspaper articles and editorials seizing on Ms. Simpson's affidavit as cause for Congressional inquiry. As explained by Assistant U.S. Attorney Feaga in his statement, "The case of *United States v. Siegelman* was pursued and successfully prosecuted because my co-counsel and I, a grand jury, a trial jury, and a federal judge, after hearing the facts, believed that those facts established that Siegelman unlawfully sold out the best interests of the people of the State of Alabama. Any assertion to the contrary ... is just plain wrong."
>
> *"Calling for a congressional inquiry is one thing, but basing the request on an incomplete and inaccurate telling of one side of the story is an abuse of power.*[12]

We agree.

2. Karl Rove's Evidence

To his credit, notwithstanding the Committee majority's transparent purposes, Karl Rove time and again offered the Committee his information about the Siegelman allegations. Because the President has asserted that White House advisors at Mr. Rove's level are immune from compelled congressional testimony – indeed, that issue remains in litigation in the case of Committee v. Miers, No. 1:08-cv-409 (D.D.C.) – Mr. Rove offered to share his information in writing, in lieu of a hearing, but without prejudice to the Committee's right to insist on further process. The majority repeatedly refused, and in the end subpoenaed Mr. Rove to and held the July 10, 2008 hearing that it knew he could not attend.

---

[12] *Response to Errors* at 8-9 (emphases added).

When it became clear through this turn of events that the majority was not willing to obtain Mr. Rove's written information, Committee Ranking Member Lamar Smith took Mr. Rove up on his offer. On July 15, 2008, Ranking Member Smith sent Mr. Rove written questions about the Siegelman matter. These questions asked for Mr. Rove's answers regarding whether he had ever undertaken to influence the investigation and prosecution of Gov. Siegelman, whether he had ever interacted with Ms. Simpson regarding Gov. Siegelman or any other person or matter, and whether he had any additional information to offer the Committee concerning the Siegelman controversy. Ranking Member Smith's questions thus addressed all relevant aspects of the matter.

On July 22, 2008, Mr. Rove's attorneys transmitted to Ranking Member Smith Mr. Rove's written answers. Mr. Rove responded in the clearest of terms that he had never undertaken in any way or through anyone to influence the Siegelman case:

> I have never communicated, either directly or indirectly, with Justice Department or Alabama officials about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, or about any other matter related to his case, nor have I asked any other individual to communicate about these matters on my behalf. I have never attempted, either directly or indirectly, to influence these matters.[13]

Mr. Rove also made clear that he had never known or dealt with Ms. Simpson, whether with regard to Siegelman or any other matter:

> I have never communicated, either directly or indirectly, with Simpson about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, about any other matter related to his case, or about any other matter whatsoever.
>
> * * *
>
> I have never communicated, either directly or indirectly, with Simpson about any political campaigns before, during, or after 2001, or about any other matter whatsoever.
>
> * * *
>
> I do not and have never known Simpson personally. It is possible that Simpson may have met me at a public function, but I do not know her, I have never worked with her, and I have never communicated with her, either directly or indirectly.[14]

---

[13] *Rove Answers* at 1-2.
[14] *Id.* at 1-3.

In addition to these answers, Mr. Rove also pointedly addressed Ms. Simpson's specific allegations, discussed below, regarding his alleged solicitation of her to take compromising pictures of Siegelman and the mention of "his" name on a piece of Ms. Simpson's e-mail correspondence concerning a contract bid before the Federal Emergency Management Agency:

> I have never communicated, either directly or indirectly, with Simpson about taking photographs of any individuals whatsoever, including Governor Siegelman, and I have never asked her to undertake any task to discredit Governor Siegelman. Nor have I asked any other individual, either directly or indirectly, to take photographs of Governor Siegelman.
>
> * * *
>
> I am not the "Karl" referenced on the email. Karl Dix, a partner at Smith, Currie & Hancock in Atlanta, Georgia, has publicly stated that (1) he worked with Rob Riley and Simpson on a Federal Emergency Management Agency cleanup contract (the subject of the email); and (2) "Rob did give me an e-mail in 2002, and I was the Karl in the email." See Exhibit A, "Riley's son willing to rebut testimony," *Tuscaloosa News*, October 11, 2007.[15]

The above is obviously a direct refutation of Ms. Simpson's allegations. But that is still not all of the information Mr. Rove offered. On the contrary, he also provided a substantial amount of additional information refuting the allegations lodged against him. The entirety of this information, and indeed all of Mr. Rove's information, is reproduced in the appendices to these Minority Views.[16] But as with Mr. Franklin's information, a great deal of what Mr. Rove has provided is worth including here. For example, Mr. Rove pointed the Committee to an abundance of supporting evidence, including in affidavits, offered by other individuals allegedly involved in a "key" November 18, 2002 conference call in which Ms. Simpson "learned" of a conspiracy to "get" Siegelman:

> "No one has corroborated Simpson's allegations regarding my alleged 'involvement' in the Siegelman case. Indeed, many individuals have rebutted her charges. With respect to the telephone call Simpson alleges took place on November, 18, 2002, the following individuals have denied that such a call occurred:
>
> "• In an October 2007 Affidavit, Terry Butts asserted that 'among other general matters that I recall on November 18, 2002, co-counsel Matt Lembke, Rob Riley, and I were together in Rob's office on the mentioned date. As I recall, none of us were ever outside each other's presence on that day for any length of time, so if a conference call with Ms. Simpson occurred as she alleges, I am confident we would remember it, particularly, in light of the comments she alleges. Again, I neither recall any such call, nor do I believe any such

---

[15] *Id.* at 3.
[16] *See* Appendices A-C.

call/conversation as alleged ever took place. Further, Bill Canary was not present with us on November 18, 2002, nor do I ever recall any conference call with him. In fact, to my knowledge and recall, I have never had a phone call with Mr. Canary.' See Exhibit B, Butts Affidavit.

"• In an October 2007 Affidavit, Rob Riley stated that he has 'no memory' of being on a phone call with Jill Simpson on November 18, 2002. He further stated that 'I do not believe a phone call occurred that involved Ms. Simpson, former Alabama Supreme Court Justice Terry Butts . . . Bill Canary . . . , and myself on November 18, 2002 in which Mr. Butts allegedly stated that he would confront former Alabama Governor Don Siegelman . . . with photographs of a political prank, . . . and would attempt to convince Mr. Siegelman to concede the election based on said photographs, or that Mr. Canary allegedly made statements to the effect that 'his girls' would take care of Mr. Siegelman or that 'Karl' had spoken to, or gone over to, the Department of Justice and that the Department of Justice was pursuing, or would pursue, a case against Siegelman.' See Exhibit C, Riley Affidavit.

"• In an October 2007 Affidavit, Matthew Lembke asserted, 'I do not recall the phone call that Ms. Simpson claims took place between her, Justice Butts, Bill Canary, and Rob Riley at 10:52 am on November 18, 2002, for 11 minutes. I did not leave the presence of Justice Butts and Rob Riley for more than a few minutes at any point from the time I arrived at Rob's office until we left for the victory speech at the end of the day . . . If there had been a conference call conducted by speaker phone in Rob's office as described by Ms. Simpson, I believe that I would have heard it. I do not recall any such call taking place while I was there. In addition, Bill Canary was not at Rob's office on November 18, 2002, nor do I recall that he participated in any conference call involving me at any point during the post-election controversy. . . . During the post-election controversy, there were several lawyers around the state who served as co-counsel for the Riley campaign on various post-election legal matters. Jill Simpson was not one of those lawyers. In fact, the first time I ever recall hearing Ms. Simpson's name was when I read an account of her affidavit on the *New York Times* website.' See Exhibit D, Lembke Affidavit.

"• In a July 2007 interview with the Birmingham News, Simpson herself backed away from her original charges about the phone call, explaining, '[y]ou can read it both ways . . . I did it as best I could to factually write it down as exactly as to what was said. And there's two interpretations to it, there's no doubt about that.' See Exhibit E, 'Affidavit about Siegelman case open to debate,' *Birmingham News*, July 8, 2007. With respect to the Siegelman charges more generally:

* * *

"• Principal Deputy Assistant Attorney General Brian Benczkowski has stated that '[a]t the time Ms. Simpson alleges the purported statements were made, Mr. Siegelman was already under federal investigation. The existence of the investigation had been widely reported in newspapers and television reports, some released more than ten months before the alleged conversation. . . . Indeed, even Mr. Siegelman states that Ms. Simpson's affidavit is false as it relates to him. Moreover, according to Ms. Simpson, she met with Mr. Siegelman and his co-defendant Richard Scrushy for several months before signing the statement at their urging." See Exhibit G, Benczkowski Letter.[17]

Mr. Rove also drew the attention of the Committee to Mr. Franklin's statements, discussed at length above, and provided a number of exhibits supporting his answers. Lastly, Mr. Rove pointed the Committee to a host of other glaring problems with Ms. Simpson's "allegations" and the purported case against him. Because this information is so to the point, it, too, is worth reproducing here:

"(1) Despite his repeated public statements that I played a role in his prosecution, and despite being called upon to substantiate that charge, Governor Siegelman has not offered a single piece of evidence that I played any role whatsoever in his case.

"• Before giving credence to Siegelman's baseless allegations of impropriety, the Committee should require Siegelman to substantiate his allegations about my 'involvement' in his prosecution – something he has failed to do in either media interviews *or* court filings.

"• While Siegelman seems to rely on Simpson's claims to make his argument to the media, he has directly denied her other charges about his reasons for conceding the 2002 Alabama gubernatorial race. In an interview prior to entering prison, he publicly stated that he *actually* dropped out because he did not want a repeat of Al Gore's challenge of the 2000 presidential vote in Florida, not because he was threatened by Riley operatives or promised a deal regarding the Justice Department investigation. See Exhibit H, 'Siegelman aides contradict main part of Simpson affidavit,' The Associated Press State & Local Wire, July 19, 2007.

"(2) Simpson is simply not a credible source, and the Committee should exercise due diligence before relying upon her accusations.

"• The *Weekly Standard* has said this: 'As a lawyer, [Simpson] has scratched out an uncertain living in DeKalb County, Alabama. Fellow DeKalb County lawyers describe her as 'a very strange person' who 'lives in her own world.' The daughter of rabid Democrats, she has rarely if ever been known to participate in politics as even a low-level volunteer…Those

[17] *Rove Answers* at 4-5.

who know her in DeKalb County scoff at the idea that she is a Republican at all.' See Exhibit I, 'A Conspiracy So Lunatic . . . Only 60 Minutes could fall for it,' The *Weekly Standard*, May 26, 2008.

"• Simpson has not provided any information about campaigns on which she may have worked with me. Not a single Republican county chairman, activist, or candidate has stepped forward to verify that she is indeed – as she now styles herself – a known 'Republican operative.'

"• Simpson has been unable to produce *any* Alabama campaign finance filings identifying her as a paid staffer receiving a salary or a consulting fee. Such a disclosure would have been required if she were, in fact, a paid campaign operative to an Alabama campaign. In addition, Simpson has not provided *any* other information supporting her claim to have worked with me in Alabama campaigns over the years, or that I asked her to undertake any projects or assignments on my behalf in Alabama or elsewhere.

"• Said the Alabama Republican Party Chairman in a press release: 'Our staff has done an exhaustive search of Alabama Republican Party records going back several years, and we can find not one instance of Dana Jill Simpson volunteering or working on behalf of the Alabama Republican Party – as stated by 60 Minutes reporter Scott Pelley. Nor can we find anyone within the Republican Party leadership in Alabama who has ever so much as heard of Dana Jill Simpson until she made her first wave of accusations last summer in an affidavit originally released only to the New York Times.' See Exhibit J, 'Statement by Alabama Republican Party Chairman Mike Hubbard,' February 24, 2008.

(3) Simpson's story has dramatically evolved over the last year, raising grave doubts about her veracity.

"May 2007 Affidavit

"• In her May 2007 Affidavit, Simpson asserted (1) that Rob Riley called her 'multiple' times on November 18, 2002, and that during one of the calls, she, Rob Riley, Bill Canary and Terry Butts discussed that Terry Butts would confront Siegelman regarding a scheme involving the KKK and 'get' him to concede (yet, multiple individuals have vehemently denied that such a call happened); (2) that Bill Canary stated that 'his girls' would take care of Siegelman (never mind that the investigation was public knowledge at this point); and (3) that Bill Canary stated that 'Karl' had spoken with the Department of Justice and the Department was already pursuing Siegelman (an assertion denied by the Acting U.S. Attorney who prosecuted Siegelman, among others). At no point did Simpson mention working with me to take photographs of Governor

Siegelman in a compromising position, a scintillating 'fact' which would seem to be noteworthy.

"July 2007 Birmingham News Interview

"• In a July 2007 interview with the Birmingham News, Simpson herself backed away from her original charges about the phone call, explaining, 'y]ou can read it both ways . . . I did it as best I could to factually write it down as exactly as to what was said. And there's two interpretations to it, there's no doubt about that.' See Exhibit E, 'Affidavit about Siegelman case open to debate,' *Birmingham News*, July 8, 2007.

"September 2007 Committee Interview

"• In her interview, Simpson again backed away from the Affidavit, asserting that 'I mean, as I said, I couldn't put everything down. I put the best I could, but I didn't write every single word that occurred in that.' Simpson Interview at 26.

"• In her interview, Simpson asserted that prior to drafting the Affidavit, she had been told that I had spoken about Governor Siegelman's case to the 'head guy' at the Public Integrity Section at the Department of Justice, and that the 'head guy' had 'agreed to allocate whatever resources, so evidently the guy had the power to allocate resources, you know.' She apparently possessed this alleged 'knowledge' prior to her May 2007 Affidavit and her July 2007 interview, but inexplicably did not reference it on either occasion. Simpson Interview at 50-53.

"February 2008 60 Minutes Interview

"• In her February 2008 interview with 60 Minutes, Simpson unveiled the bizarre accusation that I personally asked her to take pictures of Siegelman in 'a compromising, sexual position' with one of his aides. This story seems to be an outgrowth of the tale she told the Judiciary Committee, wherein it was Rob Riley who had asked her to 'obtain some pictures' of Don Siegelman (although in the older version of the story, Riley had allegedly asked only for pictures of campaign events). She presumably possessed this alleged 'knowledge' prior to her May 2007 Affidavit, her July 2007 newspaper interview, and her September 2007 Committee interview, but inexplicably did not reference it on any of these occasions. Simpson Interview at 12; 'Did Ex-Alabama Governor Get a Raw Deal?' *60 Minutes*, February 24, 2008.

"• Despite this shocking 'fact' about her spy missions, neither in the original Affidavit, nor in 143 pages of interview transcript, did she ever claim to have met me, spoken to me, or carried out any work on my

behalf, even though the apparent point of her Affidavit and interview was to accuse me of wrongdoing in connection with Governor Siegelman.

"February 2008 MSNBC Interview

"• When questioned about her claims regarding requests to photograph Governor Siegelman, Simpson made disturbing allegations about the Judiciary Committee majority, which either further calls into question Simpson's veracity or suggests that the majority attempted to conceal the absurdity of her allegations:

ABRAMS: Why have you never mentioned before the, uh, the allegation about Rove and the pictures?
SIMPSON: Oh, I mentioned it to people. They just did not, um, use it. Because nobody wanted to go into the fact that I had been following Don Siegelman trying to get pictures of him cheating on his wife.
ABRAMS: But . . . some of your critics have said, 'Oh, you know, in front of Congress, et cetera, she had a lot of opportunities. Why hasn't she mentioned this before?'
SIMPSON: Well, let me explain something to you. I talked to congressional investigators, Dan. And when I talked to those congressional investigators I told them that I had followed Don Siegelman and tried to get pictures of him cheating on his wife. However, they suggested to me that that was not relevant because there was nothing illegal about that and they'd just prefer that it not come up at the hearing that day.

Verdict with Dan Abrams, February 25, 2008.

"(4) Simpson has not offered any proof whatsoever of her allegations, and the Committee should require that such proof be produced before giving credence to her accusations.

"• *Not a single individual* has corroborated Simpson's story about my "involvement" in the Siegelman investigation, indictment, and conviction. Nor has any individual corroborated her other odd stories about the KKK, the Siegelman/Riley race, and her so-called involvement with various Alabama campaigns in which I was involved. Indeed, multiple trustworthy individuals and public officials have publicly and forcefully denied her allegations – and these individuals and public officials are the mere tip of the iceberg.

"• Simpson has provided no evidence that she indeed was asked to take photographs of Governor Siegelman, or even that she attempted to do so in some manner. She has produced no photographs, no meeting or telephone records showing that we communicated, no travel receipts that

would prove she was following Governor Siegelman, no gubernatorial travel schedules or itineraries, and no proof whatsoever that I hired her to undertake a surreptitious research effort.

"• Indeed, it is highly unlikely that her presence shadowing Governor Siegelman over a lengthy period of time would somehow escape detection by the Governor's security detail.

"(5) Simpson's motives in attacking me are murky at best.

"• At her interview before this Committee, Simpson was accompanied by Joseph Sandler, the current general counsel to the Democratic National Committee. Simpson Interview at 1-2.

"• Simpson has admitted that she assisted 'an attorney for [Richard] Scrushy,' Art Leach, in attempting to secure a new trial for Scrushy. She also admitted that she has corresponded with John Aaron, an Alabama attorney and 'political researcher' to whom she was allegedly introduced by Siegelman, for purposes of 'researching' the judge overseeing Siegelman's case. Simpson Interview at 67-80.

"• During her interview before the Committee, Simpson admitted that she asked Aaron 'to help me write the affidavit,' and that Aaron created the first draft. She was 'not certain' whether for the final draft, she 'start[ed] from scratch' or 'start[ed] with Aaron's and change[d] it around[.]' Simpson Interview at 79-81.

"• During her interview, Simpson also admitted that her intention in drafting the Affidavit was that it would be given to the Scrushy and Siegelman legal teams via Aaron and her friend Mark Bollinger, who previously served as an aide to a former Democratic Alabama Attorney General. 'I had decided to do an affidavit and had done it because [Scrushy's office] had called several times,' she said. Simpson Interview at 79-84, 136-138. [18]

Given the comprehensive and definitive nature of Mr. Rove's answers, and their consistency with the statements of the Middle District's career officials, we would have hoped that this information would have satisfied the Committee, bringing this matter to a close. Instead, the majority continued to proceed with contempt proceedings against Mr. Rove.

What, then, was the majority's substantive response to Mr. Rove's information? First and foremost, it was the impossibly incredulous position that Mr. Rove, in his answers to Ranking Member Smith, somehow failed to "address whether he communicated with any . . . 'individual'" other than Justice Department or Alabama

[18] *Rove Answers* at 6-9 (emphases in original).

officials regarding the Siegelman case.[19] This is sophistry of a remarkably high order, ignoring as it does each of: (1) Mr. Rove's blanket statement that he "never attempted, either directly or indirectly, to influence" Siegelman's case; (2) Mr. Rove's specific statement that he had never "asked any other individual to communicate about these matters on my behalf" to Justice or Alabama officials; and (3) Mr. Rove's specific statement that he "never communicated, either directly *or indirectly*, with Justice Department or Alabama officials about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, or about any other matter related to his case." Indeed, the majority even ignores that at the center of its demand for more information from Mr. Rove is hearsay "evidence" from Ms. Simpson that Mr. Rove specifically met with officials of the Department's Public Integrity Section, *when these answers specifically state that Mr. Rove "never communicated, either directly or indirectly, with Justice Department . . . officials* about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, or about any other matter related to his case." And, of course, who but Department of Justice officials were in a position to do anything about the case? No one.

Second, and equally absurdly, the majority claims that it needs to ask Mr. Rove follow-up questions "that would reveal exactly what he means by terms such as 'influence' and 'these matters' or whether there are any other ambiguities or gaps in his denials."[20] What more could Mr. Rove possibly have said than what he in fact said:

> I have never communicated, either directly or indirectly, with Justice Department or Alabama officials about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, or about any other matter related to his case, nor have I asked any other individual to communicate about these matters on my behalf. I have never attempted, either directly or indirectly, to influence these matters.

The majority's attempt to dismiss this answer as "ambiguous" or "gap-laden" is nothing short of Kafkaesque. Mr. Rove has clearly stated that he did nothing whatsoever, directly or indirectly, through communications or otherwise, to influence anyone or anything related to Siegelman's prosecution. The claim that the majority needs to ask him follow-up questions about what he could possibly mean by "influence" or "these matters" demonstrates *only* that what the majority is in search of is not genuine information, but a pretext upon which to subject Mr. Rove to a modern-day Salem witch trial.

Finally, the majority claims that it has phone records showing a call between Jill Simpson and Rob Riley on the morning of the alleged conference call with Butts, Canary and company, and that hearsay testimony from Siegelman attorney and former Clinton Administration U.S. Attorney Doug Jones, as well as other Siegelman/Scrushy counsel, supports the inference that "Washington" authorities were the real force behind the

---

[19] *Majority Markup Memo* at 10.
[20] *Id.*

eventually successful prosecution of Siegelman.[21] The aforementioned affidavits from Justice Butts, Mr. Riley and Mr. Lembke refute the allegation that Ms. Simpson's purported phone call ever occurred. Moreover, the majority makes no independent attempt to establish that Ms. Simpson's alleged phone call went to the office at which Mr. Riley, Mr. Butts and the rest of his team were that day, was answered by Mr. Riley, ever was joined by Mr. Canary, Mr. Butts or others, or in fact was anything more than a long call to a receptionist or an answering machine at a Riley campaign or business facility. As for Mr. Jones' testimony, it is telling that the majority is willing to put the hearsay testimony of Siegelman/Scrushy counsel, including a former Clinton Administration official like Mr. Jones, above the direct and definitive evidence of career Middle District officials such as Mr. Franklin and Mr. Feaga. It is also telling that, rather than call the witnesses to whom Mr. Jones allegedly talked, the majority vaults over them to insist on testimony from Karl Rove.

Once again, the majority's selective approach to the evidence and the witnesses reveals its willingness to manipulate this matter for partisan reasons, based on partisans' testimony. And once again, the information that the majority is willing to ignore, and the degree to which the majority is willing to stretch credulity, betray the true motivation of their inquiry. The inquiry is not an attempt to get to the facts of the matter. It is simply an effort to get Mr. Rove, whether by hook or by crook.

3. Information from other witnesses

As discussed above, other individuals touched upon by Ms. Simpson's allegations of a "conspiracy" to target Governor Siegelman for prosecution also have rebutted her "claims." These individuals include William "Bill" Canary, Terry Butts, Rob Riley, Matt Lembke, and Don Siegelman himself. Like Mr. Rove, Mr. Franklin has succinctly summarized the statements of these witnesses:

> According to an article by Dana Beyerle published in the Times Daily on June 24, 2007 . . . , William Canary has gone on record stating that he has never spoken to Karl Rove or the Department of Justice about prosecuting Don Siegelman. Terry Butts, one of the attorneys for Mr. Siegelman's co-defendant Richard Scrushy, likewise denies any such conversation. Rob Riley also does not recall any such conversation. As reported by Mr. Beyerle . . . , Mr. Siegelman also contradicts Ms. Simpson's affidavit as it relates to him, stating that when he dropped his 2002 re-election loss protest, it was not for the reasons recited by Ms. Simpson in her affidavit, which related to an alleged Democratic plot to hang Siegelman's opponent's campaign posters near a Ku Klux Klan rally site.[22]

---

[21] *Id.* at 11-13.
[22] *Response to Errors* at 7.

According to Siegelman's attorney, Joe Espy, Siegelman conceded the election out of concern for the expense of a protracted election challenge.[23]

It is worth, moreover, emphasizing the credibility of these additional witnesses. Not only do they all testify consistently, but Terry Butts is a former Alabama Supreme Court justice. Matt Lembke has been appointed by the Alabama Supreme Court to serve on Alabama's Standing Committee on Rules of Conduct and Canons of Judicial Ethics. In addition, any statement offered by Siegelman or his attorneys denying Simpson's allegations is a statement against interest. All of these factors confer a high degree of credibility upon this information. If there were a genuine question that could remain at this point, the appropriate approach would be to call these witnesses to a hearing *before* any hearing with Mr. Rove. At such a hearing, we could vet the witnesses directly. If their testimony held and were not impeached, there would all the more be no need to call Mr. Rove.

4. Ms. Simpson's "Evidence"

What is left, then to the story that Karl Rove somehow influenced the prosecution of Governor Siegelman? There is nothing other than the Simpson allegations themselves, which all of the above decisively rebuts. Indeed, even without the above, Ms. Simpson's allegations would not bear up under scrutiny.

a. Ms. Simpson's first story – the May 2007 affidavit

Ms. Simpson's trail of allegations began in May 2007, a month before Governor Siegelman was sentenced. At that time, she released an affidavit in which she claimed that on November 18, 2002, the day Siegelman conceded the gubernatorial race, she was party to a telephone conversation regarding Siegelman's prosecution.[24] Simpson alleges that Rob Riley (son of Gov. Bob Riley), former Alabama Supreme Court Justice Terry Butts and Bill Canary (husband of Leura Canary, the U.S. Attorney for the Middle District of Alabama) participated in the telephone call.[25]

According to the affidavit, the purpose of the telephone call was to discuss photos Simpson had taken two days earlier at a Ku Klux Klan rally documenting an attorney who she believed to be a Democrat placing Riley campaign signs at the rally.[26] The affidavit alleged that Terry Butts said he was going to confront Siegelman with these facts to get him to concede the election.[27]

The affidavit also alleged that Riley, Butts and Canary discussed how to get Siegelman to concede the gubernatorial race.[28] At one point, Bill Canary allegedly said

---

[23] Bob Johnson, *Siegelman aides contradict main part of Simpson affidavit*, Associated Press (July 19, 2007) (reproduced at Appendix C, p.25).
[24] Affidavit of Jill Simpson at 2-3 (May 21, 2007).
[25] *Id.* at 2.
[26] *See id.* at 1-2.
[27] *Id.* at 2.
[28] *See id.*

not to worry because "his girls" (allegedly meaning his wife, Leura Canary, and Alice Martin, U.S. Attorney for the Northern District of Alabama) would take care of Siegelman.[29]

According to the affidavit, Rob Riley asked Canary if he was sure that "his girls" could take care of Siegelman.[30] Canary allegedly "told him not to worry that he had already gotten it worked out with Karl and Karl had spoken with the Department of Justice and the Department of Justice was already pursuing Don Siegelman."[31]

The May 2007 affidavit caused a media firestorm in Alabama. It also provoked strong reactions from Mr. Riley, Mr. Butts, Mr. Canary, and the Middle District of Alabama career staff, as well as a refutation by Governor Siegelman. These reactions are discussed above.

b. July 2007 newspaper interview

In July 2007, Ms. Simpson gave an interview to Alabama reporter Brett Blackledge about the allegations in her affidavit. This interview can be heard on public audio files at http://blog.al.com/bn/2007/10/in_her_own_words_audio_files_o.html. In the interview, in which Ms. Simpson at a minimum teetered on the verge of hysteria, she stated that the conversation "recounted" in her affidavit could be interpreted innocently to mean no more than that Karl Rove found out from the Department of Justice at some point that the Department was already investigating Don Siegelman. Ms. Simpson also clearly stated that her different reading of the conversation was only her opinion, and that either side could interpret the "conversation" either way. Id.

c. September 2007 congressional interview

Nevertheless, at the Committee majority's instance, on September 14, 2007, the Committee's majority and minority staff interviewed Jill Simpson regarding the affidavit and the alleged telephone call of November 18, 2002. The following is a summary of additional details disclosed during the interview:

- Simpson admits that she took no notes and in no way memorialized the alleged telephone conversation of November 18, 2002.[32]

- Simpson admits that on November 18, 2002, she did not contact the Alabama Bar Association or talk to anyone else about the

---

[29] *Id.* at 3.
[30] *Id.*
[31] *Id.*
[32] Transcript, Interview of Dana Jill Simpson at 101 (September 14, 2007) ("*Simpson Committee Staff Interview*").

alleged telephone conversation, despite claiming to be concerned about the call.[33]

- Simpson admits that she discussed the preparation of her affidavit with Don Siegelman, his attorneys and Robert Scrushy in early 2007.[34]

- While Simpson's affidavit alleged that Siegelman conceded the gubernatorial election after Terry Butts threatened to expose photos of the KKK rally, in her interview Ms. Simpson claimed that Siegelman also conceded the election after Terry Butts promised that he would not face prosecution by the Justice Department.[35] By contrast, Siegelman did not raise this allegation at any point during his trial.

- In her interview, Simpson alleged that two additional conversations had taken place with Rob Riley regarding Siegelman's concession and prosecution.[36] Simpson failed, however, to include these "conversations" in her affidavit or report these to the Alabama Bar Association or the U.S. District Court for the Middle District of Alabama.

- In her interview, Simpson alleged that Gov. Bob Riley met with former White House strategist Karl Rove to discuss Siegelman's prosecution, and that Rob Riley had frequent contact with Rove. In support of this allegation, Simpson identified the name "Karl" on an email from Rob Riley discussing a Federal Emergency Management Agency contract as a notation referring to Karl Rove.[37] According to Rob Riley, the "Karl" referred to in this document is in fact Alabama attorney Karl Dix, and Simpson knew that Dix was an attorney on the FEMA contract case.[38]

- Simpson further alleged in her interview that Rob Riley had told her in early 2005 that Chief U.S. District Court Judge Mark Fuller would "hang Don Siegelman." According to Ms. Simpson, Rob Riley said that he knew Judge Fuller, that they had gone to the University of Alabama together, and that he knew that Judge Fuller would be assigned the Siegelman case before Siegelman was indicted.[39] Riley and Judge Fuller did both attend the University of

---

[33] *Id.* at 113-15.
[34] *See, e.g., id.* at 116-17.
[35] *Id.* at 42-43, 112.
[36] *Id.* at 42-52.
[37] *Id.* at 34-36.
[38] Affidavit of Robert R. Riley, Jr. at 2-3 (Oct. 22, 2007) ("Riley Affidavit," reproduced in Appendix E at 7-8).
[39] *See. e.g., Simpson Committee Staff Interview* at 53, 56, 110, 112.

> Alabama; Riley was a freshman when Fuller was in law school. Riley denies that the conversation with Simpson ever occurred.[40]

These various internal inconsistencies, changing stories, and tabloid-level allegations all point to one, simple conclusion – that Ms. Simpson is not credible.

d. National news interviews

Ms. Simpson's interview with congressional staff, however, was not the end of her tale. Her story continued to evolve in two, later interviews with the national news media.

First, in a February 2008 interview with the CBS program "60 Minutes," Simpson lodged for the first time the outlandish accusation that Mr. Rove had asked her to take pictures of Siegelman in "a compromising, sexual position" with one of his aides.[41] This story may be an outgrowth of her statement during her Committee her interview that Rob Riley had asked her to "obtain some pictures" of Siegelman.[42] In the interview version of the story, however, Riley was only alleged to have asked for pictures of other alleged events.[43]

Of course, Ms. Simpson presumably possessed her alleged "knowledge" of this provocative incident prior to her May 2007 Affidavit, her July 2007 newspaper interview, and her September 2007 Committee interview, but she did not refer to it on any of those occasions. Indeed, despite the salaciousness of this alleged incident, Ms. Simpson did not claim in either her original affidavit nor her Committee staff interview that she had ever met Karl Rove, spoken to him, or carried out any work on his behalf. This is exceedingly strange and dramatically undercuts Ms. Simpson's credibility, since the very point of her May 2007 affidavit and her prior interviews was to accuse Karl Rove of wrongdoing in connection with Governor Siegelman.

Also in February 2008, Ms. Simpson gave an interview to MSNBC's Dan Abrams. When questioned about her claims regarding requests to photograph Governor Siegelman, Simpson went further again – this time lodging troubling allegations about her discussions with the Judiciary Committee majority that either call her credibility into further question or suggest that the Committee majority attempted to conceal some of her allegations. Pertinent arts of her Abrams interview are as follows:

> ABRAMS: Why have you never mentioned before the, uh, the allegation about Rove and the pictures?

---

[40] *Riley Affidavit* at 3.
[41] *See, e.g., Rove Answers* at 8.
[42] *Simpson Committee Staff Interview* at 12.
[43] *See, e.g., id.* at 14-15.

> SIMPSON: Oh, I mentioned it to people. They just did not, um, use it. Because nobody wanted to go into the fact that I had been following Don Siegelman trying to get pictures of him cheating on his wife.
>
> ABRAMS: But . . . some of your critics have said, "Oh, you know, in front of Congress, et cetera, she had a lot of opportunities. Why hasn't she mentioned this before?"
>
> SIMPSON: Well, let me explain something to you. I talked to congressional investigators, Dan. And when I talked to those congressional investigators I told them that I had followed Don Siegelman and tried to get pictures of him cheating on his wife. However, they suggested to me that that was not relevant because there was nothing illegal about that and they'd just prefer that it not come up at the hearing that day.[44]

This issue did not come up in the staff interview in which the Committee minority staff participated. Thus, we conclude that it came up in a lengthy, prior telephone interview conducted exclusively with Committee majority staff.

Whether or not Ms. Simpson's allegations about majority staff conduct are false, they are obviously of concern. Either she is lying or Committee majority staff attempted to suppress her "evidence." Such suppression may have occurred because majority staff thought the "revelation" undercut Ms. Simpson's credibility, which they wanted to preserve during the formal, joint staff interview conduced on September 14, 2007. There may be another explanation. As yet, we do not know the true answer.

In any case, the allegations Ms. Simpson made during her television interviews are obviously suspect. In his July 22, 2008 answers to Ranking Member Smith, Karl Rove himself pointed out some of the problems with the allegations, including that:

- "Simpson has provided no evidence that she indeed was asked to take photographs of Governor Siegelman, or even that she attempted to do so in some manner. She has produced no photographs, no meeting or telephone records showing that we communicated, no travel receipts that would prove she was following Governor Siegelman, no gubernatorial travel schedules or itineraries, and no proof whatsoever that I hired her to undertake a surreptitious research effort."

- "Indeed, it is highly unlikely that her presence shadowing Governor Siegelman over a lengthy period of time would somehow escape detection by the Governor's security detail."[45]

---

[44] *Verdict with Dan Abrams*, February 25, 2008.
[45] *Rove Answers* at 9.

At the end of this review of Ms. Simpson's various stories, we are left wondering what might have driven her to make such unfounded, shifting and incredible allegations, much less to make some of them to Congress in a staff interview. We are also left wondering why she has not been called for a hearing before the Committee, at which her information could be thoroughly tested directly by Members. We are certain, however, that it is Ms. Simpson, if anyone, who should be considered for prosecution – specifically, for misleading Congress in violation of 18 U.S.C. sec. 1001. It is not Karl Rove, who simply respected the President's assertions of testimonial immunity and executive privilege, and did as much as he could to provide what information he was allowed to supply.

More broadly with regard to the Siegelman matter, we are convinced that there is no legitimate basis for the Committee's continued investigation of the case. We are also *profoundly* concerned that this investigation's lasting result will be to send a chilling message to federal prosecutors – Republican and Democrat alike. That message will be that if there are prosecutors who have the temerity to prosecute prominent Democratic officials for public corruption, the Democratic majority of this Committee stands ready to do everything in its power to defame those prosecutions and, by implication, those prosecutors and the justice system itself. This is extraordinarily dangerous. It is also the pinnacle of the most vicious irony, given the majority's claim that this investigation was launched precisely to inquire into whether the Bush Administration had tried to stimulate or chill prosecutorial decisions for political purposes.

Of course, with regard to Karl Rove and the instant contempt resolution, we note another biting irony. What ostensibly emerged from an inquiry into alleged selective prosecution of Democrats by the Bush Administration has metamorphosed, in the Committee majority's partisan hands, into the genuinely selective persecution of Karl Rove. If the House votes in favor of the resolution, the Speaker presumably will then refer the matter to the U.S. Attorney for the District of Columbia, pursuant to 2 U.S.C. secs. 192 and 194. At that point, it will be the Speaker and the House, not the Administration, that will be pursuing selective prosecution.

5. The Majority's general allegations of "selective prosecution" are <u>false.</u>

Finally, it should not escape mention that the Committee majority's erroneous allegations of misconduct in the Siegelman matter are simply extensions of their erroneous allegation that the current Administration has in general selectively prosecuted Democrats. The baselessness of that allegation is apparent upon any objective view of the Bush Administration's record.

The following, for example, are some of the prominent investigations and prosecutions of Republicans pursued by the Department of Justice during the Bush Administration. A number of these cases were described in the most recent report to Congress by the Department of Justice's Public Integrity Section. That report recounts

the Section's activities in 2006 – notably, an election year in which Republicans ended up losing control of the Congress in the wake of public concern over corruption.

Senator Ted Stevens. Sen. Ted Stevens is currently being prosecuted by the Department under an indictment issued in July 2008 by a federal grand jury in the District of Columbia. The indictment charges Sen. Stevens with seven felony false statement counts connected to alleged gifts from VECO, a prominent oil services company, as well as VECO's chief executive officer. These gifts are alleged to have exceeded $250,000 in value.

Congressman Randy "Duke" Cunningham. California Representative Randy "Duke" Cunningham was investigated for a number of public corruption offenses, including the receipt of over $2 million in bribes. He pled guilty to conspiracy to commit bribery, honest services mail fraud, honest services wire fraud, and tax evasion, as well as a separate count of tax evasion. Rep. Cunningham was sentenced to over eight years in federal prison. A number of other prominent figures were prosecuted in the wake of Rep. Cunningham's case, including Brent Wilkes and Kyle "Dusty" Foggo.

Congressman Rick Renzi. Arizona Representative Rick Renzi was investigated in connection with land deals in his home state. On February 20, 2008, Rep. Renzi and two other individuals were charged in a 35-count indictment in Arizona federal court. The indictment includes charges of conspiracy, wire fraud, money laundering, concealment, and other offenses. In the wake of his indictment, Rep. Renzi has determined not to run again for Congress.

Alphonso Jackson. Former Bush Administration Secretary of Housing and Urban Development Alphonso Jackson is the subject of a joint investigation by the FBI and Justice Department regarding his ties to William Hairston, a contractor who was awarded a government job under the Housing Authority of New Orleans. Secretary Jackson resigned his post in the wake of the allegations.

Jack Abramoff. Jack Abramoff was the central figure in a string of public corruption prosecutions pursued by the Bush Justice Department. Mr. Abramoff pled guilty to conspiracy and honest services mail fraud involving a Member of the United States House of Representatives, as well as tax evasion.[46]

Congressman Robert Ney. Ohio Representative Robert Ney was prosecuted and pled guilty to conspiracy to commit multiple offenses, including honest services fraud, as well as to making false statements to the United States House of Representatives.[47]

---

[46] *See, e.g.*, Public Integrity Section, Criminal Division,U.S. Department of Justice, *Report to Congress on the Activities and Operations of the Public Integrity Section for 2006* at 3.
[47] *See, e.g., id.*

J. Steven Griles. J. Steven Griles, former Deputy Secretary of the Department of the Interior, was investigated and pled guilty to obstructing the Senate's investigation of the Abramoff scandal. He was sentenced to ten months in prison, $30,000 in fines, and three years of supervised release.

David Safavian. David Safavian, the former chief of staff for the General Services Administration (GSA), was prosecuted and convicted by a jury in the District of Columbia of obstruction of justice in connection with a GSA-OIG investigation and of making false statements to a GSA ethics official, the GSA-OIG, and the United States Senate.[48] He was sentenced to 18 months of imprisonment. Although his conviction recently was overturned, his prosecution is clear evidence that the Administration has pursued members of both parties.

Neil Volz. Former lobbyist Neil G. Volz was prosecuted and pled guilty to a charge of conspiring with Jack Abramoff, Michael Scanlon, Tony Rudy, and others to commit honest services fraud and to violate the federal one-year lobbying ban.[49]

Tony Rudy. Former lobbyist Tony C. Rudy was prosecuted and pled guilty to a charge of conspiring with Jack Abramoff, Michael Scanlon, and others to commit honest services fraud, mail and wire fraud, and a violation of the federal one-year lobbying ban.[50]

Roger Stillwell. U.S. Department of the Interior employee Roger G. Stillwell was prosecuted and pled guilty to falsely certifying his Fiscal Year 2003 Executive Branch Confidential Financial Disclosure Report.[51]

Jack Thomas. Jack Thomas, former Campaign Manager for the Robert Lamutt for Congress Committee, was sentenced to $42,000 in restitution, six months of home confinement with electronic monitoring, and four years of probation. Thomas had previously pled guilty to mail fraud.[52]

James Tobin. James Tobin, the former New England Regional Director of the Republican National Committee, was prosecuted on charges stemming from a scheme to disrupt phone service to five Democratic Party offices and a firefighters' ride-to-the-polls program on Election Day in November 2002. He was convicted by a federal jury of conspiring to commit interstate telephone harassment and making repeated and continuous interstate phone calls with intent to harass. Mr. Tobin was sentenced to 10 months of imprisonment to be followed by two years of supervised release, and a fine of $10,000.[53]

---

[48] *See, e.g., id.*
[49] *See, e.g., id.*
[50] *See, e.g., id.*
[51] *See, e.g., id.*
[52] *See, e.g., id.* at 41-42.
[53] *See, e.g., id.* at 42.

Peter Kott. Former Alaska House Speaker Peter Kott was prosecuted and convicted of bribery, extortion and conspiracy for corruptly soliciting and receiving financial benefits from a company in exchange for performing official acts in the Alaska State Legislature on the company's behalf. Other defendants have been charged in connection with the Justice Department's ongoing investigation, including former House members Victor H. Kohring and Bruce Weyhrauch.

Tom Anderson. Thomas T. Anderson, a former elected member of the Alaska state House of Representatives, was convicted of extortion, conspiracy, bribery and money laundering for soliciting and receiving money from an FBI confidential source in exchange for agreeing to perform official acts to further a business interest represented by the source.[54]

We could go on, and we could also regale the instances of corrupt Democrats other than Don Siegelman. Suffice it to say that, as the above suggests, the Bush Administration has not discriminated in its prosecution of public corruption committed by Democrats and Republicans. Indeed, the Administration's evenhandedness has produced one of the supreme ironies of congressional Democrats' investigation of the Department – major actions in the investigation have several times coincided with major events in the Administration's investigation and prosecution of Republicans. Thus, Democrats introduced a resolution to impeach Alberto Gonzales the day the media broke the story of the FBI's raid on the home of Republican Senator Ted Stevens. This Committee's Democrats filed their contempt report against former White House Counsel Harriet Miers the day the Department secured Brent Wilkes' conviction on corruption charges in a California federal court. And as a final example, Senator Stevens was indicted the day before this Committee voted to hold Karl Rove in contempt. That indictment came a mere 100 days before the November 2008 elections.

B. U.S. Attorney Dismissals

In addition to the Siegelman matter, the Committee majority also sought to question Mr. Rove at the July 10, 2008 hearing with regard to the dismissals in 2006 of former U.S. Attorneys David Iglesias and H.E. "Bud" Cummins, as well as the listing of U.S. Attorney Steven Biskupic on an earlier list of potential candidates for dismissal. Mr. Iglesias is the former U.S. Attorney for the District of New Mexico. Mr. Cummins is the former U.S. Attorney for the Eastern District of Arkansas and a former subordinate to Mr. Rove in the White House. Mr. Biskupic is the still-sitting U.S. Attorney for the Eastern District of Wisconsin.

As with the Siegelman issue, the evidentiary record does not bear out the majority's suspicions that Mr. Rove manipulated for improper partisan purposes the dismissal or consideration for dismissal of these or any other U.S. Attorneys. In addition, as in the Siegelman matter, the majority has failed first to call to a hearing or otherwise pursue a number of witnesses whose information would be important to determining how

[54] *See, e.g., id.* at 34-35.

we should exercise our institutional prerogatives in this matter. Finally, the issues concerning the three U.S. Attorneys are all in litigation in the Committee's suit over prior subpoenas issued to former White House Counsel Harriet Miers and White House Chief of Staff Joshua Bolten. For all of these reasons, the Committee had no genuine need to insist that Mr. Rove appear at a hearing. To say the least, there is no need to consider a contempt resolution against Mr. Rove until the pending litigation is concluded, and both Mr. Rove and the Committee have an opportunity to conform their conduct to the courts' final ruling.

1. The Evidentiary Record Does not Bear out the Majority's Suspicions.

a. David Iglesias

The allegations concerning David Iglesias' removal center around whether Mr. Iglesias was removed so that his district might bring public corruption or vote fraud cases that Mr. Iglesias failed to bring against Democrats. Leaving aside whether such cases, due to their merits, should have been brought by whoever was U.S. Attorney in New Mexico, the evidence we have discovered is inconsistent with the view that Mr. Iglesias was removed to clear the path for partisan activity, such as the bringing of partisan cases by a partisan replacement.[55]

First and foremost, this is because Mr. Iglesias was replaced, not by a political appointee, but by the career First Assistant United States Attorney (FAUSA) already sitting in his office, Mr. Larry Gomez.[56] To this day, Mr. Gomez is the acting U.S. Attorney in the District of New Mexico.[57] Had the administration sought to remove Mr. Iglesias for partisan purposes, Mr. Gomez is precisely the opposite of the sort of person whom the administration would have installed as Mr. Iglesias's replacement – a long-term career prosecutor from within the district.[58]

This conclusion is all the more plain when one considers that Mr. Gomez had been Mr. Iglesias's FAUSA for quite some time.[59] In fact, Mr. Gomez had been taking care of the day-to-day management of the district during much of Mr. Iglesias's tenure.[60] Had Mr. Iglesias been failing to move cases the White House or the Department wanted to move for partisan reasons, Mr. Gomez would have been part and parcel of that very

---

[55] The discussion and evidence cited in the following sections incorporates the discussion of these issues in the minority views section and appendices of H. Rep. 110-423, which discussed 2007's contempt resolution against former Counsel to the President Harriet Miers. Citations provided in this section are principally to the relevant parts of H. Rep. 110-423.
[56] H. Rep. 110-423 at 113.
[57] *Id.*
[58] *Id.* Indeed, in all but one of the other districts involved in the investigation, the resigning U.S. Attorney similarly was replaced by a career Department employee. *Id.* The only exception was the Eastern District of Arkansas, in which Mr. Griffin replaced Mr. Cummins. *Id.* There is no allegation that an attempt to gain a partisan advantage in a case or investigation may have been at play in this district. *Id.*
[59] *Id.*
[60] *Id.*

same failure. It would have been nonsensical for the administration to have replaced Mr. Iglesias with Mr. Gomez, if it had wanted to seize the alleged partisan advantage.

In addition, as was highlighted from the start of the investigation, when Mr. Iglesias's and the other U.S. Attorneys' resignations were sought, the administration had authority under the PATRIOT Act to replace the dismissed U.S. Attorneys indefinitely, through the end of the administration, without any need to go to the Senate for a Senate-confirmed replacement. Had the administration sought to achieve a partisan advantage in New Mexico, surely it would have used that authority to replace Mr. Iglesias with a trustworthy partisan, not Mr. Gomez. Yet it chose Mr. Gomez, and there he still sits. The obvious conclusion is that the administration was not seeking a partisan advantage in New Mexico at all.

Indeed, if we look to the one instance in which any officials did consider using the PATRIOT Act authority to avoid Senate confirmation, our conclusion regarding the administration's action in New Mexico is strengthened. That instance was with regard to the Eastern District of Arkansas, where Mr. Sampson and some White House staff considered the option of using the PATRIOT Act to install Mr. Griffin while avoiding the need for Senate confirmation. Even in that instance, where there is no allegation that the administration sought to place Mr. Griffin for a partisan advantage, the evidence is clear that Attorney General Gonzales rejected such a use of the PATRIOT Act authority, contrary to the suggestion of his chief of staff and the sense of some at the White House.[61] Such a course of action in the Eastern District of Arkansas hardly bespeaks a disposition on the Department's part to engage in or cave in to partisan impulses in the District of New Mexico or any other district, or that the White House could have orchestrated such partisan activity, had it wanted to.

Also important is the fact that Kyle Sampson, the key White House contact regarding the replacement of the U.S. Attorneys, has testified that the White House, including Mr. Rove specifically, never to his knowledge sought the resignation of any of the dismissed U.S. Attorneys in order to seek a partisan advantage in a given case or investigation or for any other reason unrelated to ordinary performance concerns.[62] Mr. Sampson was the fulcrum of all interaction within the Department and between the White House and the Department during the course of the U.S. Attorney review.[63] Had the White House in any way, through any person, sought to obtain the resignation of any U.S. Attorney to obtain a partisan advantage in a case or investigation or for any other partisan reason, Mr. Sampson assuredly would have known.[64]

In addition, Mr. Sampson testified that the White House did not resist the Department's appointment of any career acting or interim U.S. Attorney.[65] In Mr. Iglesias' case and in the others, this is consistent with the view that the White House was

---

[61] *Id.* at 113-14
[62] *Id.* at 110-11.
[63] *Id.* at 111.
[64] *Id.*
[65] *Id.* at 114.

not trying to remove U.S. Attorneys for partisan reasons, to clear the way for partisan replacements.[66]

Mr. Sampson's testimony is echoed, moreover, by the testimony of former Attorney General Gonzales and the Department's former White House liaison, Monica Goodling. Ms. Goodling, for example, testified under immunity that:

> To the best of my recollection, I have never had a conversation with Karl Rove or Harriet Miers while I served at the Department of Justice; and I am certain that I never spoke to either of them about the hiring or firing of any U.S. attorney. Although I did have discussions with certain members of their staffs regarding specific aspects of the replacement plan, I never recommended to them that a specific U.S. attorney be added to or removed from Mr. Sampson's list; and I do not recall that they ever communicated any such recommendation to me.[67]

Ms. Goodling likewise stated that she was "not aware of anybody within the Department ever suggesting the replacement of these U.S. attorneys to interfere with a particular case or in retaliation for prosecuting or refusing to prosecute any particular case for political advantage."[68] As for former Attorney General Gonzales, he testified in response to Ranking Member Smith's direct questioning at his May 2007 hearing that he did not recall the White House ever asking him to "seek the resignation of any U.S. attorney in order to retaliate for, interfere with, or gain a partisan advantage in any case or investigation, whether about public corruption or any other offense[.]"[69]

Clearly, if Karl Rove had ever attempted to influence Mr. Iglesias' dismissal for improper partisan reasons, he would have done so through these critical political appointees at the Department. That they all testified to the effect that he did not is compelling evidence that he in fact did not. We note, further, that the Department's Inspector General, Glenn Fine, has recently testified before the Senate Judiciary Committee that he has found no basis to prosecute Mr. Sampson, Mr. Gonzales or Ms. Goodling for false or misleading testimony before Congress in the course of the U.S. Attorneys investigation.[70] Accordingly, the testimony of these witnesses appears even more credible today than it did when we first received it.

The interview testimony of Matthew Friedrich, one of the counsels to former Attorney General Gonzales, also points against the conclusion that the Department and the White House sought a partisan advantage or otherwise acted out of partisan reasons when seeking Mr. Iglesias's resignation. That testimony showed that contacts by the White House about vote fraud issues in three judicial districts – the District of New

---

[66] *Id.*
[67] *Id.* at 112.
[68] *Id.*
[69] *Id.* at 111.
[70] *See Senate Judiciary Committee Holds Hearing on Politicized Hiring at the Department of Justice* at 16-17 (July 30, 2008) (questioning by Senator Specter) (CQ Transcript).

Mexico, the Eastern District of Wisconsin, and the Eastern District of Pennsylvania – as well as similar contacts by New Mexico citizens, were not associated with partisan influence on the Department. Indeed, those incidents showed that the Department handled the information conveyed in a way that helped protect against partisan influence.[71]

In the first instance, Mr. Sampson, upon having received information about the White House's concerns, passed the matter on to Mr. Friedrich.[72] Mr. Friedrich, in turn, passed the information along to the Department's Criminal Division.[73] When he had received the Criminal Division's relevant information about issues in the districts (which was mixed), he passed it on to Mr. Sampson.[74] Mr. Friedrich does not recall having heard of any particular action having resulted from this incident.[75] In connection with these issues, he also received from Mr. Sampson a packet of information that appeared to be from Mr. Rove or Mr. Rove's office, including what appeared to be newspaper clippings about the issues.[76] When Mr. Sampson passed the information on to Mr. Friedrich, Mr. Friedrich asked what the information meant.[77] Mr. Sampson suggested simply that the sender wanted the Department to take a look at it.[78] After a pause, Mr. Sampson instructed Mr. Friedrich simply to "Do with it what you will."[79] Mr. Friedrich did nothing with it, other than place it in his files.[80] Mr. Sampson, for his part, never followed up on these contacts with Mr. Friedrich.[81]

Separately, Mr. Friedrich also recalled that Monica Goodling referred to him in June 2006 individuals from New Mexico who had visited the White House the same day, and who wanted to discuss vote fraud issues with the Department.[82] Mr. Friedrich met with them, heard a description of their concerns, and indicated that they ought to relay their information to the Department's Public Integrity Section.[83] Mr. Friedrich subsequently called the Public Integrity Section and alerted it that it might receive a contact from these individuals.[84] He indicated that, regardless of whether the individuals mentioned that they had spoken with Mr. Friedrich, the Section ought to treat the matter as they would anything else with regard to whether a case should be opened; the decision was up to them.[85] As was the case with the incident involving Mr. Sampson, Ms. Goodling never followed up on this issue with Mr. Friedrich.[86]

---

[71] H. Rep. 110-423 at 114.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.* at 115.
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] *Id.*

The majority has alleged that these incidents suggest that the Department may have been influenced for partisan reasons. What they actually show is that, whether or not any contacts may have been attempted for partisan reasons, the Department defused the potential for partisan effects. In other words, when the Department received information about U.S. Attorneys and their districts from White House officials or individuals who might be perceived as partisan, it knew how to process the information so that it could be appropriately evaluated by the appropriate office, and also knew how to let any information it did not believe truly merited any action to die a quiet, bureaucratic death. This refutes the view that the Department acted in an improper partisan manner upon receiving information that might concern one of the U.S. Attorneys affected by the U.S. Attorneys review. We also note that, had the White House been conveying information in this way to seek a U.S. Attorney dismissal for improper partisan reasons, it would seem highly unlikely that Mr. Sampson and Ms. Goodling would never have followed up on their initial contacts with Mr. Friedrich. In short, these incidents bespeak a process that was immune from improper partisanship, not one that succumbed to it.[87]

b. Steven Biskupic

As mentioned above, Steven Biskupic is the U.S. Attorney for the Eastern District of Wisconsin. That is one of the districts highlighted in the information received by Mr. Friedrich, discussed above, concerning vote fraud issues.

The majority also focused on Mr. Biskupic's case in its November 2007 contempt report concerning Harriet Miers and Joshua Bolten. The majority's own concessions, however, defeated the majority's accusations concerning Mr. Biskupic. They defeat them no less today. The assertion was that Mr. Biskupic appeared on one of Mr. Sampson's early dismissal lists, but that, after bringing several vote fraud and public corruption cases, he was no longer on the list. The implication was that Mr. Biskupic delivered a quid pro quo for his removal from the list. But as the majority conceded, "Mr. Biskupic has forcefully stated that he did not ever know that he was on any Department of Justice firing list, and no evidence reviewed by the Committee contradicts this statement."[88] Accordingly, there could have been no link between Mr. Biskupic's placement on a list and any alleged changes in Mr. Biskupic's conduct.

As for the majority's current desire to have testimony from Mr. Rove on this matter, we emphasize once more that Mr. Sampson and other Department witnesses long ago offered direct testimony disproving that Mr. Rove or any other White House official ever sought Mr. Biskupic's dismissal for any improper partisan purpose. Accordingly,

---

[87] *Id.* The majority, citing a newspaper report, also points to a conversation Mr. Rove allegedly had in late 2006 with individuals from New Mexico, in which Mr. Rove reportedly said that Mr. Iglesias was "gone." *Id.* Mr. Rove's statement, if it was ever made, may have been mere puffery. *Id.* In any event, the key fact is that DOJ officials have consistently testified that neither Mr. Rove nor anyone else at the White House ever mentioned Mr. Iglesias' name to the Department as a candidate for dismissal. *Id.*

[88] *Id.* at 119-120.

there is no genuine need for the majority to hound Mr. Rove for testimony on this matter. We also note that the majority's interest in Mr. Rove is rooted in the incident, described above, in which Mr. Rove may have passed on to the Department concerns about vote fraud issues in Mr. Iglesias' and Mr. Biskupic's districts, as well as the Eastern District of Pennsylvania. As discussed above, however, that incident did not reflect any improper partisan influence on the Department.

c. H. E. "Bud" Cummins

The dismissal of H. E. "Bud" Cummins, the former U.S. Attorney for the Eastern District of Arkansas, has never been at the heart of the U.S. Attorneys inquiry. Mr. Cummins, for example, has never claimed that he was pushed out for improper partisan reasons. In addition, although his intended replacement, Tim Griffin, was a protégé of Karl Rove in the White House, Mr. Griffin also was clearly qualified to serve as U.S. Attorney. He had previously served well as a prosecutor in the Western District of Arkansas. He also had served as a volunteer prosecutor in Iraq and had other sterling credentials for the position.

The majority's interest in questioning Mr. Rove about Mr. Cummins' dismissal is, therefore, unimportant to the investigation. Indeed, the majority's stated interest seems just to be in resolving alleged inconsistencies in the record over whether Mr. Cummins was asked to leave due to performance issues or simply to make way so that Mr. Griffin could serve.[89] These matters clearly have nothing to do with the alleged "politicization" of the Department; they are no more than a pretext for calling a spectacle hearing for Mr. Rove.

2. The Committee Majority Failed To Seek or To Vet Preliminary Evidence from Necessary Prior Sources before Issuing a Subpoena and Recommending Contempt.

As in the Siegelman matter, moreover, the majority had no need to seek testimony from Mr. Rove prior to seeking or vetting evidence from important prior sources. Once again, this failure reveals the partisan nature of the majority's pursuit of Mr. Rove. And once again, the majority's course of action stands inevitably to undermine any effort by the Committee to overcome the White House's resistance to the subpoena in court. Indeed, the majority should have known to a certainty that Mr. Rove's testimony about the U.S. Attorneys matter would be the subject of at least the assertion of testimonial immunity, if not also executive privilege. Well before Mr. Rove's hearing was scheduled, the President already had made such assertions with regard to Senate testimony from Mr. Rove.[90] As a result, the majority knew that it would have to satisfy the "demonstrated, specific need" test before it could obtain testimony from Mr. Rove about the dismissals of former U.S. Attorneys Iglesias and Cummins and the listing of Mr. Biskupic as a potential candidate for dismissal. Nevertheless, not only did the

[89] *Majority Markup Memo* at 6-7.
[90] Letter from Fred F. Fielding, Counsel to the President, to the Honorable Patrick J. Leahy and the Honorable Arlen Specter at 1 (Aug. 1, 2007).

majority ignore the positive evidence, discussed above, that there was no improper partisanship in these instances; the majority also failed to undertake numerous obvious steps to gather and vet needed evidence from other preliminary sources. It was thus hardly less improvident than in the Siegelman matter for the Committee to insist on this hearing with Mr. Rove and on holding Mr. Rove in contempt.

a. Preliminary steps that should have been taken to investigate the Iglesias dismissal

At the very outset of the U.S. Attorneys investigation, Mr. Iglesias testified briefly at a March 6, 2007 hearing before the Subcommittee on Commercial and Administrative Law. The majority never called Mr. Iglesias, however, for the same type of in-depth interview later conducted with other Department witnesses. This is critically important, because it was not until *after* the March 6th hearing that the Committee obtained information from another witness about the contacts from concerned New Mexico citizens that are at the heart of speculation over the decision to dismiss Mr. Iglesias.[91] A Committee interview with Mr. Iglesias after that date could thus have been very informative. Likewise, the March hearing occurred before the Committee had received and reviewed the vast bulk of documentary evidence in this matter. An interview with Mr. Iglesias after document review could have helped the Committee ask many more informed questions than were possible at the March hearing.

The Senate Ethics Committee, by contrast to the Committee majority, has proven the value of taking such additional steps. In its investigation of allegedly improper congressional contact with Mr. Iglesias, the Senate Ethics Committee did interview Mr. Iglesias.[92] It also gathered information from a substantial number of other witnesses.[93] In its decision in the matter, the bipartisan committee concluded unanimously that there was "no substantial evidence" of wrongdoing in contact Senator Pete Domenici made with Mr. Iglesias, although it did find an appearance of impropriety.[94]

The majority also never called the New Mexico citizens themselves for interviews. Nor did the majority call the full set of Department officials allegedly connected with those contacts. The Committee did interview Matthew Friedrich, of the former Attorney General's staff, and asked him questions about the contacts. But the Committee never interviewed the other Department officials to whom Mr. Friedrich referred the individuals. Nor did the Committee interview the career official who was present during Mr. Friedrich's meeting with the New Mexico citizens.[95] Further, the majority never called for an interview Monica Goodling, the other Department official on the Attorney General's staff alleged to have had contact with the individuals from New

---

[91] *See Majority Markup Memo* at 5.
[92] Senate Committee on Ethics, *Public Letter of Qualified Admonition* at 2 (April 14, 2008).
[93] *Id.*
[94] *Id.* at 1.
[95] *See* H. Rep. 110-423 at 523.

Mexico. At such an interview, the Committee could have fully probed Ms. Goodling for information on this issue.[96]

The majority also never interviewed former Attorney General Gonzales about the Iglesias matter. Mr. Gonzales did appear before the Committee at a hearing while still at the Department. That hearing, however, took place only as Mr. Friedrich's evidence concerning the New Mexico citizens' contacts was first coming to light. Certainly, after Mr. Friedrich's evidence had not only emerged but been more fully considered – and much more so after Mr. Gonzales had left the Department – the majority could have attempted to call Mr. Gonzales for an interview to explore this matter particularly and in depth. But it has not.

Further, the Committee never completed the March 2007 interview it began with Michael Elston, the former chief of staff to former Deputy Attorney General Paul McNulty. It also therefore never called Mr. McNulty for a follow-up interview after completing the questioning of Mr. Elston and the emergence of the information about the New Mexico citizens' contacts. This failure is of no small importance. The timing of Mr. Iglesias' placement on the U.S. Attorneys dismissal list coincided with the involvement of Mr. Elston and Mr. McNulty in this matter, and it also coincided with contacts between Senator Domenici of New Mexico and Mr. McNulty about Mr. Iglesias' performance.[97] Completing Mr. Elston's interview and following up thereafter with Mr. McNulty could well have shed additional light on this dismissal.

Finally, the Committee majority also failed to pursue other White House officials who worked below Mr. Rove and who would not have come under an assertion of testimonial immunity. The Senate, for example, was able to obtain the subpoenaed testimony of two lower-level White House officials, Mr. Jennings and Sara Taylor.[98] Mr. Jennings was within the Committee Chairman's March 20, 2007 subpoena authority, and the Committee could readily have considered whether to extend the Chairman's authority to Ms. Taylor. Yet the Committee neither subpoenaed them nor called them for staff interviews. As their Senate testimony demonstrated, they were willing and able in an open hearing to provide answers to a number of Senate questions.[99] In a Committee hearing, and perhaps even more so in a Committee staff interview, these officials may have been willing to offer testimony directly responsive to the Committee's questions. The Committee may also have been more able to obtain information from William Kelley, who was Harriet Miers' deputy, and who likewise was included in the March 20th subpoena authority, and Mr. Christopher Oprison, a subordinate to Ms. Miers and

---

[96] Because Ms. Goodling had received testimonial immunity and was no longer at the Department, *see id.* at 112, she could have been expected to have been particularly forthcoming in and amply available for an extensive interview with Committee staff. While it is true that she was called before the Committee for a hearing, questions in that setting necessarily extended to other issues or were required to be made within a compressed timeframe. A follow-up staff interview could have provided the Committee with a much freer means of focusing precisely on the matter of Mr. Iglesias' dismissal with Ms. Goodling and probing her evidence until it was exhausted.

[97] *See, e.g., id.* at 127.

[98] *See id.* at 794-858.

[99] *See id.*

Mr. Kelley who was involved in at least some communications between the Department and the White House.[100] Any of these witnesses might have offered relevant and material evidence, and thus helped the Committee better determine whether there was any need for evidence from Mr. Rove.

In its decision in the Miers case, the district court opined that such "leads" were "highly speculative."[101] With all due respect to the district court, that opinion is patently wrong. For example, it is impossible to cast as highly speculative the possibility of interviewing David Iglesias and the New Mexicans to whom Mr. Rove allegedly spoke about him. It is similarly erroneous to characterize as speculative the notion of following the investigative path taken by the Senate Ethics Committee – a path that led that committee to determine on a bipartisan basis that no wrongdoing had occurred. In the end, the only thing that can fairly be characterized as "highly speculative" is the majority's stubborn insistence that Karl Rove committed any partisan wrongdoing in either the U.S. Attorney dismissals or the Siegelman case, in the face of the overwhelming evidence to the contrary.

b. Additional steps that could have been taken in the cases of U.S. Attorneys Biskupic and Cummins

Similar steps could also have been taken to explore further any issues concerning Mr. Biskupic and former U.S. Attorney Cummins. The Committee majority, for example, never called either Mr. Biskupic or Mr. Cummins for an individual interview (although it did ask for a briefing by Mr. Biskupic about the Thompson case). The majority also never called Mr. Griffin. Likewise, the Committee never questioned Attorney General Gonzales in depth about either Mr. Biskupic or Mr. Cummins, whether at Attorney General Gonzales' May 10, 2007 hearing or in a separate interview. Nor, as discussed above, did the Committee attempt to subpoena or call for staff interviews any of Mr. Jennings, Ms. Taylor, Mr. Kelley, or Mr. Oprison. Indeed, such interviews or hearings might have been particularly productive with regard to Mr. Cummins, since he was replaced by a former subordinate of Mr. Rove's and a colleague of some of these officials.

Once again, therefore, we can only conclude that the majority seeks a hearing with Mr. Rove, not to conduct a genuine investigation, but for strictly partisan purposes.

3. The U.S. Attorneys Issues Are In Pending Litigation, Rendering a Contempt Resolution against Karl Rove Unnecessary.

Finally, as mentioned at the outset of this discussion, the issues in the U.S. Attorneys' investigation are all the subject of pending litigation in Committee v. Miers, No. 1:08-cv-409 (D.D.C.). In that case, the Committee has sued Joshua Bolten in his official capacity and Harriet Miers personally to force their appearance and the production of testimony and documents in the investigation. The White House has

---

[100] *See* H. Rep. 100-423 at 110–11.
[101] *Committee v. Miers*, Civ. No. 1:08-cv-409, slip op. at 19, n.10 (July 31, 2008).

defended the suit vigorously, asserting that the President's senior-most advisors, which would include not only Ms. Miers and Mr. Bolten, but also Mr. Rove, are absolutely immune from compelled testimony before the Congress. The White House also stands at the ready to litigate issues of executive privilege that might be asserted at a hearing or in document discovery, if the courts rule that these officials are not in fact immune from congressional compulsion.

The district court ruled in the Committee's favor on July 30, 2008 with regard to the absolute immunity issue. The White House has since appealed this issue to the U.S. Court of Appeals for the District of Columbia Circuit.[102] As we have long advocated, we believe that there is a significant risk that the courts' eventual disposition of this issue will fall against the Committee, and that the Committee lacks any need for information sufficient to justify this risk of the Congress' oversight prerogatives.

In light of the pending litigation, there is clearly no need to proceed with a contempt resolution against Mr. Rove. If the Committee wins the Miers litigation, we can be confident that Mr. Rove, like Ms. Miers and Mr. Bolten, will follow the law laid down by the courts. We will thus be able to obtain Mr. Rove's information without further squandering the House's resources, without further risking the House's oversight prerogatives, and without gratuitously exposing Mr. Rove to potential criminal liability and public opprobrium. Meanwhile, if the White House wins the litigation, the courts' decision would likewise control Mr. Rove's case. Thus, the majority's pursuit of him would be in vain. Indeed, if the courts were to rule for the White House in the pending case, it would hardly be fair to claim that Mr. Rove was in contempt of Congress when he obeyed a White House order based on the very same grounds. Any further proceedings in this body against Mr. Rove therefore should, at a minimum, await the outcome of the pending litigation in Miers.

III. The Majority's Legal "Ruling" in Support of Its Contempt Recommendation Is Erroneous.

As a final matter, we believe that the July 10, 2008 ruling of Subcommittee Chairwoman Sanchez, on which the Committee majority's contempt resolution rests, is gravely in error. In this ruling, the Chairwoman determined that Mr. Rove's claims of privilege were not properly asserted; that there was no proper legal basis for Mr. Rove not to appear; that the Administration's claim of absolute testimonial immunity was contrary to the conduct of previous administrations; that the claim of immunity was contradicted by Mr. Rove's behavior leading up to the hearing; and that the White House had failed to demonstrate that any claims of privilege were valid. None of these determinations withstands scrutiny.

---

[102] *Committee v. Miers*, No. 08-5357 (D.C. Cir.).

A. Whether Claims of Privilege Were Properly Asserted

In ruling that there were no properly asserted claims of privilege, Chairwoman Sanchez relied on a 35-year-old trial court opinion and a two-hundred-year-old circuit court opinion allegedly requiring that the President himself must have personally asserted executive privilege for the assertion to be valid. Those precedents, however, have long since been contradicted by the D.C. Circuit. Under *In re Sealed Case*, it is clear that the White House Counsel may validly inform the Congress or the courts that the President has decided to invoke executive privilege.[103] A personal assertion by the President to the Committee is unnecessary.

In a July 9, 2008 letter, the White House Counsel conveyed the fact that the President had decided to assert executive privilege in Mr. Rove's case. Accordingly, under the relevant D.C. Circuit law, executive privilege was properly asserted.

B. Whether Rove Had a Proper Legal Basis for Refusing To Appear at the Hearing

Chairwoman Sanchez' next ruling – that there was no "proper legal basis" for Mr. Rove's refusal to appear at the hearing – rested on the view that there was no case law supporting the Administration's assertion of absolute testimonial immunity for aides such as Mr. Rove. At the time, that was true. And, unless and until the D.C. Circuit reverses the district court's decision in Miers, it will continue to be true. Nevertheless, Office of Legal Counsel (OLC) opinions from administrations of both parties going as far back as the Truman administration support the theory of absolute immunity for the most senior of presidential advisors. Moreover, the issue was known by the Chairwoman to be in active litigation at the time of her ruling.

It was, therefore, to say the least, disingenuous for the Chairwoman to assert that there was no "proper legal basis" for Mr. Rove's refusal to appear. Rather than push this issue with Mr. Rove through contrived contempt proceedings, the Committee should await the final results of the Miers litigation. Only then will the Committee be able to say whether or not the absolute immunity theory is without any "proper legal basis."

C. Whether the Claim of Absolute Immunity Is Inconsistent with the Conduct of Prior Administrations

Chairwoman Sanchez likewise erroneously argued that the absolute immunity claim advanced for Mr. Rove was inconsistent with the conduct of prior administrations. As discussed above, OLC opinions from administrations of both parties support the theory of absolute immunity. Additionally, although Chairwoman Sanchez cited previous instances of White House officials testifying before Congress, those instances for the most part occurred during just three separate episodes: Watergate (6 instances); various investigations of President Clinton's tenure (46 instances); and the creation of the Department of Homeland Security (9 instances). These instances do not provide

[103] *In re Sealed Case*, 121 F.3d at 744 n.16.

precedent for overruling absolute immunity here. We also note that the appearances of former White House officials Sarah Taylor, Scott Jennings and Scott McClellan during this Congress are not evidence that the senior-most presidential advisors lack immunity from compelled congressional testimony. None of those officials was of a high enough level to qualify for the immunity, as the immunity was framed by the White House. Moreover, an appearance by any one official in response to a subpoena does not mean that an administration has permanently waived its right to assert absolute immunity for other senior officials.

D. Whether the Claim of Absolute Immunity Was Contradicted by Mr. Rove's Course of Conduct before the Hearing

Chairwoman Sanchez additionally asserted that Mr. Rove himself had acted contrary to any assertion of testimonial immunity during the run-up to his hearing. In support of her position, she cited an e-mail response from Mr. Rove's attorney to the media – to wit, that Mr. Rove's answer to the general question about whether he would appear before Congress was "sure." Chairwoman Sanchez also suggested that Mr. Rove had spoken directly to the media about the alleged politicization of the Justice Department.

These representations to the media, however, did not and could not waive the assertion of absolute immunity. That is because the claim of immunity is the President's to assert, not Mr. Rove's. Statements by Mr. Rove and his attorney about whether Mr. Rove would testify are legally irrelevant.

In addition, we note that Mr. Rove's comments to the media were limited and directed to the Siegelman matter. That is hardly the equivalent to compelled congressional testimony not only on the Siegelman matter but also on the other matters the majority claims it wants to explore. Moreover, a limited discussion with the media can hardly waive a claim of absolute immunity from compelled congressional testimony, which obviously would apply in a distinct context.

There are, however, two aspects of Mr. Rove's conduct that are of pivotal importance to the consideration of contempt. First, it cannot be over-emphasized that Mr. Rove early, often and reasonably offered potential compromises to the Committee. Through his attorney, Mr. Rove offered to "meet informally with the Committee to answer questions about the allegations raised by Gov. Siegelman without transcript or oath."[104] Additionally, Mr. Rove offered to answer written questions from the Committee. Importantly, Mr. Rove's offer of accommodation was "without prejudice to the Committee's right, should it be dissatisfied with the results, to attempt to enforce the subpoena."[105]

Mr. Rove's offer of accommodation was, moreover, analogous to an accommodation accepted by the Committee on Oversight and Government Reform in the

[104] Letter from Robert Luskin to the Hon. John Conyers, Jr. (July 1, 2008) at 2.
[105] *Id.*

investigation into the death of Patrick Tillman. With regard to senior White House officials with possible information about the Tillman investigation, that committee agreed to interviews without a transcript and with the presence of counsel from the White House, but without prejudice to the Committee's right to seek a transcribed interview with these senior officials or their testimony under oath at a hearing in the future. Significantly, after Government Reform's staff conducted the informal round of interviews, the matter was resolved, and a second round was never called. There is every reason to believe that similar results could have been achieved had the majority taken Mr. Rove up on his no-prejudice offer of accommodation. Indeed, the answers Mr. Rove has now provided to Ranking Member Smith prove that the Committee could have resolved the Siegelman matter without further ado had it accepted Mr. Rove's offer.

Second, it must be recognized that Mr. Rove refused to appear before the Committee, not as a matter of personal privilege, but in obedience to the White House's assertions of absolute testimonial immunity and executive privilege. When faced with a witness who merely seeks to negotiate a middle ground between a demand by the Committee and an understandable assertion by the Executive, it is accommodation, not contempt proceedings, that the Committee should first and foremost seek.

E. Whether the White House Failed To Demonstrate that the Information Withheld Is Covered by Privilege

Finally, Chairwoman Sanchez ruled that the White House had "failed to demonstrate" that the information withheld "is covered by . . . privilege." This ruling, of course, erroneously shifted the burden of proof to the White House. It is not the White House's burden to demonstrate that information withheld is covered by executive privilege. Rather, presidential communications are, according to the Supreme Court in *United States v. Nixon,* "presumptively privileged." The burden is *on the Committee* to demonstrate that it has a sufficient need for the information. As discussed above, based on the evidence that has been put before the Committee thus far – for example, Jill Simpson's incredible and untested account of Mr. Rove's "involvement " in the Siegelman matter – the Committee has not yet even remotely approached a demonstration that it has such a need for the information it claims to seek.

IV. Conclusion

In light of all of the above, it is clear that there is no genuine need for the House to consider holding Karl Rove in contempt of Congress. On the contrary, the fair steps at this point would be either to conclude the investigation or to call Miss Simpson and Governor Siegelman for a hearing. At that hearing, it would be incumbent upon those witnesses to identify a credible basis for impeaching Mr. Rove's information and the information from other witnesses that corroborates it. Only if such a basis emerges will there be any reason for the Committee, much less the House, to proceed in any manner against Mr. Rove.

Nevertheless, the Committee majority does, of course, ask the House to hold Mr. Rove in contempt. This request stems from one, fundamental fact – the Committee majority pursues Karl Rove, not out of need, but out of partisan zealotry. The House should not lend its assistance to this effort. The Committee's investigation of the Department of Justice and the White House ostensibly was launched to stamp out partisan influence over prosecutions. It has, in the Committee majority's hands, become itself a chilling partisan weapon wielded by Democrats to persecute the Department and the White House. What is the final stage of this metamorphosis? It is the Committee majority's quest to prosecute selectively Karl Rove himself, through a contrived case of contempt, while consciously disregarding everything the Department's career officials have told us about their impartial and well-founded prosecution of Don Siegelman. Indeed, the Committee majority's very definition of "selective prosecution" as prosecution of Democrats is framed to chill both the Republican officials who now man the political leadership of our prosecutorial system and the career prosecutors in that system who might dare to prosecute Democrats. It will be a black day for this body if the House lends its imprimatur to this effort by voting in favor of the proposed resolution of contempt.

LAMAR SMITH.
CHRIS CANNON.
STEVE KING.

Appendices

A. **Letter from Robert D. Luskin, Esq., to the Honorable Lamar Smith (July 22, 2008)**

B. **Answers to House Judiciary Committee Ranking Member Lamar Smith from Karl C. Rove Regarding Allegations of Selective Prosecution in the Case of Former Alabama Governor Donald E. Siegelman (July 22, 2008)**

C. **Exhibits A-J to Answers to House Judiciary Committee Ranking Member Lamar Smith from Karl C. Rove Regarding Allegations of Selective Prosecution in the Case of Former Alabama Governor Donald E. Siegelman (July 22, 2008)**

D. **Department of Justice, Acting United States Attorney Louis V. Franklin, Sr., *Middle District of Alabama's Response to Errors in Siegelman/Scrushy National News Accounts* (July 18, 2007)**

E. **Department of Justice, Acting United States Attorney Louis V. Franklin, Sr., *Statement of Louis V. Franklin, Sr., Acting U.S. Attorney in the Siegelman/Scrushy Prosecution***

APPENDIX A

PATTON BOGGS LLP
ATTORNEYS AT LAW

2550 M Street, NW
Washington, DC 20037
202-457-6000

Facsimile 202-457-6315
www.pattonboggs.com

July 22, 2008

Robert D. Luskin
202 457 6190
rluskin@pattonboggs.com

The Honorable Lamar Smith
Ranking Member, Committee on the Judiciary
United States House of Representatives
B-351A Rayburn House Office Building
Washington, DC 20515

Dear Congressman Smith:

Attached please find the answers of my client, Karl C. Rove, to your questions regarding the case of former Governor Donald E. Siegelman.

As you know, Mr. Rove has never asserted any personal privileges in response to the Committee's subpoena, but remains obligated to follow the direction of the President. We simply cannot understand the Committee's interest in provoking a confrontation with Mr. Rove while the precise legal issue that is presented by his subpoena is subject to a pending action in District Court. We have struggled instead to find a method by which Mr. Rove could answer the Committee's questions while at the same time respecting the prerogatives of the President. We thank you for providing such an opportunity, and we trust that Mr. Rove's answers will assist the Committee in resolving these utterly unfounded allegations.

Yours sincerely,

Robert D. Luskin

Attachment

APPENDIX B

Answers to House Judiciary Committee Ranking Member Lamar Smith from
Karl C. Rove Regarding Allegations of Selective Prosecution in the Case of Former Alabama
Governor Donald E. Siegelman
July 22, 2008

---

1. Before former Alabama Governor Donald E. Siegelman's initial indictment in May 2005, did you ever communicate with any Department of Justice officials, State of Alabama officials, or any individual other than Dana Jill Simpson, Esq., regarding Governor Siegelman's investigation or potential prosecution? If so, please state separately for each communication the date, time, location, and means of the communication, the official or individual with whom you communicated, and the content of the communication.

I have never communicated, either directly or indirectly, with Justice Department or Alabama officials about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, or about any other matter related to his case, nor have I asked any other individual to communicate about these matters on my behalf. I have never attempted, either directly or indirectly, to influence these matters.

2. Before Governor Siegelman's initial indictment in May 2005, did you ever communicate with Dana Jill Simpson, Esq., regarding Governor Siegelman or Governor Siegelman's investigation or potential prosecution? If so, please state separately for each communication the date, time, location, means, and content of the communication.

I have never communicated, either directly or indirectly, with Simpson about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, about any other matter related to his case, or about any other matter whatsoever.

3. After Governor Siegelman was initially indicted in May 2005, but before the first superseding indictment against him in October 2005, did you ever communicate with any Department of Justice officials, State of Alabama officials, or any individual other than Dana Jill Simpson, Esq., regarding Governor Siegelman's investigation or prosecution? If so, please state separately for each communication the date, time, location, and means of the communication, the official or individual with whom you communicated, and the content of the communication.

I have never communicated, either directly or indirectly, with Justice Department or Alabama officials about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, or about any other matter related to his case, nor have I asked any other individual to communicate about these matters on my behalf. I have never attempted, either directly or indirectly, to influence these matters.

4. After Governor Siegelman was initially indicted in May 2005, but before the first superseding indictment against him in October 2005, did you ever communicate with Dana Jill Simpson, Esq., regarding Governor Siegelman or Governor Siegelman's investigation or prosecution? If so, please state separately for each communication the date, time, location, means, and content of the communication.

I have never communicated, either directly or indirectly, with Simpson about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, about any other matter related to his case, or about any other matter whatsoever.

5. After Governor Siegelman's first superseding indictment in October 2005, but before his subsequent conviction, did you ever communicate with any Department of Justice officials, State of Alabama officials, or any individual other than Dana Jill Simpson, Esq., regarding Governor Siegelman's investigation and prosecution? If so, please state separately for each communication the date, time, location, and means of the communication, the official with whom you communicated, and the content of the communication.

I have never communicated, either directly or indirectly, with Justice Department or Alabama officials about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, or about any other matter related to his case, nor have I asked any other individual to communicate about these matters on my behalf. I have never attempted, either directly or indirectly, to influence these matters.

6. After Governor Siegelman's first superseding indictment in October 2005, but before his subsequent conviction, did you ever communicate with Dana Jill Simpson, Esq., regarding Governor Siegelman or Governor Siegelman's investigation or prosecution? If so, please state separately for each communication the date, time, location, means, and content of the communication.

I have never communicated, either directly or indirectly, with Simpson about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, about any other matter related to his case, or about any other matter whatsoever.

7. Since Governor Siegelman's conviction, have you ever communicated with any Department of Justice officials, State of Alabama officials, or any individual other than Dana Jill Simpson, Esq., regarding Governor Siegelman's conviction, sentencing or appeal? If so, please state separately for each communication the date, time, location, and means of the communication, the official with whom you communicated, and the content of the communication.

I have never communicated, either directly or indirectly, with Justice Department or Alabama officials about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, or about any other matter related to his case, nor have I asked any other individual to communicate about these matters on my behalf. I have never attempted, either directly or indirectly, to influence these matters.

8. Since Governor Siegelman's conviction, have you ever communicated with Dana Jill Simpson, Esq., regarding Governor Siegelman or Governor Siegelman's conviction, sentencing or appeal? If so, please state separately for each communication the date, time, location, means, and content of the communication.

I have never communicated, either directly or indirectly, with Simpson about the investigation, indictment, potential prosecution, prosecution, conviction, or sentencing of Governor Siegelman, about any other matter related to his case, or about any other matter whatsoever.

9. Did you ever communicate with Dana Jill Simpson, Esq., regarding any political campaign before, during or after 2001? If so, please state separately for each communication the date, time, location, means, and content of the communication.

I have never communicated, either directly or indirectly, with Simpson about any political campaigns before, during, or after 2001, or about any other matter whatsoever.

10. Do you know Dana Jill Simpson, Esq., personally, and have you ever met or communicated with her in any other manner or context? If so, please describe the nature and context of the meeting or communication.

I do not and have never known Simpson personally. It is possible that Simpson may have met me at a public function, but I do not know her, I have never worked with her, and I have never communicated with her, either directly or indirectly.

11. In a September 14, 2007, interview with staff of the House Committee on the Judiciary, Ms. Simpson identified you as the "Karl" referred to in a hand-written note atop an email discussing a 2001 FEMA contract. Interview of Dana Jill Simpson, September 14, 2007, at 36. The e-mail refers to a proposed letter dated May 23, 2002, to FEMA Director Joe Allbaugh. Simpson Exhibit 550. This letter appears to refer to an appeal of a FEMA decision to deny payment for work performed pursuant to the contract. The hand-written note reads: "To: Jill . . . I e-mailed this to [redacted], Karl, and Stewart today . . . Rob." Id. Ms. Simpson identifies the hand-writing as that of Mr. Rob Riley and identifies "Stewart" as "a lobbyist that works for the Federalist Group." Interview at 35-36. Do you have any reason to believe that you are the "Karl" referred to in this exhibit?

I am not the "Karl" referenced on the email. Karl Dix, a partner at Smith, Currie & Hancock in Atlanta, Georgia, has publicly stated that (1) he worked with Rob Riley and Simpson on a Federal Emergency Management Agency cleanup contract (the subject of the email); and (2) "Rob did give me an e-mail in 2002, and I was the Karl in the email." See Exhibit A, "Riley's son willing to rebut testimony," *Tuscaloosa News*, October 11, 2007.

12. In a February 24, 2008, interview with 60 Minutes, Ms. Simpson specifically claimed that during a meeting with you in 2001, you asked her to try to catch then-Alabama Governor Donald E. Siegelman cheating on his wife. Specifically, Ms. Simpson claimed that you asked Ms. Simpson to take pictures of Governor Siegelman in a compromising sexual position with one of his aides. Did you ever ask Ms. Simpson to take pictures of Governor Siegelman in a compromising sexual position with one of his aides?

I have never communicated, either directly or indirectly, with Simpson about taking photographs of any individuals whatsoever, including Governor Siegelman, and I have never asked her to undertake any task to discredit Governor Siegelman. Nor have I asked any other individual, either directly or indirectly, to take photographs of Governor Siegelman.

13. Are you aware of statements by any officials or individuals regarding whether or not Ms. Simpson's allegations about the investigation and prosecution of Governor Siegelman, your alleged role in it, or your alleged communications with Ms. Simpson are credible? If so, please identify the official or individual who made the statement, the date, place and

manner of the statement's publication, and the statement's content. Please also provide a citation to or copy of each such statement, if you have one.

No one has corroborated Simpson's allegations regarding my alleged "involvement" in the Siegelman case. Indeed, many individuals have rebutted her charges. With respect to the telephone call Simpson alleges took place on November, 18, 2002, the following individuals have denied that such a call occurred:

- In an October 2007 Affidavit, Terry Butts asserted that "among other general matters that I recall on November 18, 2002, co-counsel Matt Lembke, Rob Riley, and I were together in Rob's office on the mentioned date. As I recall, none of us were ever outside each other's presence on that day for any length of time, so if a conference call with Ms. Simpson occurred as she alleges, I am confident we would remember it, particularly, in light of the comments she alleges. Again, I neither recall any such call, nor do I believe any such call/conversation as alleged ever took place. Further, Bill Canary was not present with us on November 18, 2002, nor do I ever recall any conference call with him. In fact, to my knowledge and recall, I have never had a phone call with Mr. Canary." See Exhibit B, Butts Affidavit.

- In an October 2007 Affidavit, Rob Riley stated that he has "no memory" of being on a phone call with Jill Simpson on November 18, 2002. He further stated that "I do not believe a phone call occurred that involved Ms. Simpson, former Alabama Supreme Court Justice Terry Butts . . . Bill Canary . . . , and myself on November 18, 2002 in which Mr. Butts allegedly stated that he would confront former Alabama Governor Don Siegelman . . . with photographs of a political prank, . . . and would attempt to convince Mr. Siegelman to concede the election based on said photographs, or that Mr. Canary allegedly made statements to the effect that 'his girls' would take care of Mr. Siegelman or that 'Karl' had spoken to, or gone over to, the Department of Justice and that the Department of Justice was pursuing, or would pursue, a case against Siegelman." See Exhibit C, Riley Affidavit.

- In an October 2007 Affidavit, Matthew Lembke asserted, "I do not recall the phone call that Ms. Simpson claims took place between her, Justice Butts, Bill Canary, and Rob Riley at 10:52 am on November 18, 2002, for 11 minutes. I did not leave the presence of Justice Butts and Rob Riley for more than a few minutes at any point from the time I arrived at Rob's office until we left for the victory speech at the end of the day . . . If there had been a conference call conducted by speaker phone in Rob's office as described by Ms. Simpson, I believe that I would have heard it. I do not recall any such call taking place while I was there. In addition, Bill Canary was not at Rob's office on November 18, 2002, nor do I recall that he participated in any conference call involving me at any point during the post-election controversy. . . . During the post-election controversy, there were several lawyers around the state who served as co-counsel for the Riley campaign on various post-election legal matters. Jill Simpson was not one of those lawyers. In fact, the first time I ever recall hearing Ms. Simpson's name was when I read an account of her affidavit on the *New York Times* website." See Exhibit D, Lembke Affidavit.

- In a July 2007 interview with the Birmingham News, Simpson herself backed away from her original charges about the phone call, explaining, "[y]ou can read it both ways . . . I did it as best I could to factually write it down as exactly as to what was said. And there's two interpretations to it, there's no doubt about that." See Exhibit E, "Affidavit about Siegelman case open to debate," *Birmingham News*, July 8, 2007.

With respect to the Siegelman charges more generally:

- Louis V. Franklin, Sr., Acting U.S. Attorney in the Scrushy/Siegelman prosecutions, has stated as follows: "[T]he entire story is misleading because Karl Rove had no role whatsoever in bringing about the investigation or prosecution of former Governor Don Siegelman. It is intellectually dishonest to even suggest that Mr. Rove influenced or had any input into the decision to investigate or prosecute Don Siegelman. That decision was made by me, Louis V. Franklin Sr., as Acting U.S. Attorney in the case, in conjunction with the Department of Justice's Public Integrity Section and the Alabama Attorney General's Office . . . Our decision was based solely upon evidence in the case, evidence that unequivocally established that former Governor Siegelman committed bribery, conspiracy, mail fraud, obstruction of justice, and other serious federal crimes.
  . . .
  I have never spoken with or even met Karl Rove . . . My decision [to prosecute] was based solely on the evidence uncovered by federal and state agents, as well as the special grand jury, establishing that Mr. Siegelman broke the law . . . Contrary to how the prosecution is portrayed in Adam Zagorin's Time article, rather than the U.S. Department of Justice pushing the MDAL to move forward with the prosecution of former Governor Siegelman, the push has always come from the Middle District's U.S. Attorney's office and has been spearheaded by me as the Acting U.S. Attorney in the case. My sole motivation for pushing the prosecution was a firmly held belief, supported by overwhelming evidence and the law, that former Governor Siegelman had broken the law . . . Ultimately, a jury of former Governor Siegelman's peers, consisting of men and women, African-American and Caucasian, agreed and convicted the former Governor[.]
  . . .
  I am a career Assistant U.S. Attorney in the Middle District of Alabama. I have served under both Democratic and Republican appointees. I take my role as a government prosecutor and my ethical obligations as a lawyer very seriously. I value my integrity above all else. I would never pursue a prosecution for political reasons, nor would I bring any prosecution not warranted by the evidence or the law. That simply did not happen here, no matter what anyone prints." See Exhibit F, Franklin Statement.

- Principal Deputy Assistant Attorney General Brian Benczkowski has stated that "[a]t the time Ms. Simpson alleges the purported statements were made, Mr. Siegelman was already under federal investigation. The existence of the investigation had been widely reported in newspapers and television reports, some released more than ten months before the alleged conversation. . . . Indeed, even Mr. Siegelman states that Ms. Simpson's affidavit is false as it relates to him. Moreover, according to Ms. Simpson, she met with Mr. Siegelman and his co-defendant Richard Scrushy for several months before signing the statement at their urging." See Exhibit G, Benczkowski Letter.

14. Please share with us any additional information which you would like to provide concerning Ms. Simpson's and Governor Siegelman's allegations against you or any other questions that have arisen concerning your alleged involvement with Governor Siegelman's investigation and prosecution.

Thank you for the opportunity to share additional information. Several issues are worth the Committee's consideration:

(1) Despite his repeated public statements that I played a role in his prosecution, and despite being called upon to substantiate that charge, Governor Siegelman has not offered a single piece of evidence that I played any role whatsoever in his case.

- Before giving credence to Siegelman's baseless allegations of impropriety, the Committee should require Siegelman to substantiate his allegations about my "involvement" in his prosecution – something he has failed to do in either media interviews *or* court filings.

- While Siegelman seems to rely on Simpson's claims to make his argument to the media, he has directly denied her other charges about his reasons for conceding the 2002 Alabama gubernatorial race. In an interview prior to entering prison, he publicly stated that he *actually* dropped out because he did not want a repeat of Al Gore's challenge of the 2000 presidential vote in Florida, not because he was threatened by Riley operatives or promised a deal regarding the Justice Department investigation. See Exhibit H, "Siegelman aides contradict main part of Simpson affidavit," The Associated Press State & Local Wire, July 19, 2007.

(2) Simpson is simply not a credible source, and the Committee should exercise due diligence before relying upon her accusations.

- The *Weekly Standard* has said this: "As a lawyer, [Simpson] has scratched out an uncertain living in DeKalb County, Alabama. Fellow DeKalb County lawyers describe her as 'a very strange person' who 'lives in her own world.' The daughter of rabid Democrats, she has rarely if ever been known to participate in politics as even a low-level volunteer . . . Those who know her in DeKalb County scoff at the idea that she is a Republican at all." See Exhibit I, "A Conspiracy So Lunatic . . . Only 60 Minutes could fall for it," The *Weekly Standard*, May 26, 2008.

- Simpson has not provided any information about campaigns on which she may have worked with me. Not a single Republican county chairman, activist, or candidate has stepped forward to verify that she is indeed – as she now styles herself – a known "Republican operative."

- Simpson has been unable to produce *any* Alabama campaign finance filings identifying her as a paid staffer receiving a salary or a consulting fee. Such a disclosure would have been required if she were, in fact, a paid campaign operative to an Alabama campaign. In addition, Simpson has not provided *any* other information supporting her claim to have worked with me in Alabama campaigns over the years, or that I asked her to undertake any projects or assignments on my behalf in Alabama or elsewhere.

- Said the Alabama Republican Party Chairman in a press release: "Our staff has done an exhaustive search of Alabama Republican Party records going back several years, and we can find not one instance of Dana Jill Simpson volunteering or working on behalf of the Alabama Republican Party – as stated by 60 Minutes reporter Scott Pelley. Nor can we find anyone within the Republican Party leadership in Alabama who has ever so much as heard of Dana Jill Simpson until she made her first wave of accusations last summer in an affidavit originally released only to the New York Times." See Exhibit J, "Statement by Alabama Republican Party Chairman Mike Hubbard," February 24, 2008.

(3) Simpson's story has dramatically evolved over the last year, raising grave doubts about her veracity.

May 2007 Affidavit

- In her May 2007 Affidavit, Simpson asserted (1) that Rob Riley called her "multiple" times on November 18, 2002, and that during one of the calls, she, Rob Riley, Bill Canary and Terry Butts discussed that Terry Butts would confront Siegelman regarding a scheme involving the KKK and "get" him to concede (yet, multiple individuals have vehemently denied that such a call happened); (2) that Bill Canary stated that "his girls" would take care of Siegelman (never mind that the investigation was public knowledge at this point); and (3) that Bill Canary stated that "Karl" had spoken with the Department of Justice and the Department was already pursuing Siegelman (an assertion denied by the Acting U.S. Attorney who prosecuted Siegelman, among others). At no point did Simpson mention working with me to take photographs of Governor Siegelman in a compromising position, a scintillating "fact" which would seem to be noteworthy.

July 2007 Birmingham News Interview

- In a July 2007 interview with the Birmingham News, Simpson herself backed away from her original charges about the phone call, explaining, "[y]ou can read it both ways . . . I did it as best I could to factually write it down as exactly as to what was said. And there's two interpretations to it, there's no doubt about that." See Exhibit E, "Affidavit about Siegelman case open to debate," *Birmingham News*, July 8, 2007.

September 2007 Committee Interview

- In her interview, Simpson again backed away from the Affidavit, asserting that "I mean, as I said, I couldn't put everything down. I put the best I could, but I didn't write every single word that occurred in that." Simpson Interview at 26.

- In her interview, Simpson asserted that prior to drafting the Affidavit, she had been told that I had spoken about Governor Siegelman's case to the "head guy" at the Public Integrity Section at the Department of Justice, and that the "head guy" had "agreed to allocate whatever resources, so evidently the guy had the power to allocate resources, you know." She apparently possessed this alleged "knowledge" prior to her May 2007 Affidavit and her July 2007 interview, but inexplicably did not reference it on either occasion. Simpson Interview at 50-53.

February 2008 *60 Minutes* Interview

- In her February 2008 interview with 60 Minutes, Simpson unveiled the bizarre accusation that I personally asked her to take pictures of Siegelman in "a compromising, sexual position" with one of his aides. This story seems to be an outgrowth of the tale she told the Judiciary Committee, wherein it was Rob Riley who had asked her to "obtain some pictures" of Don Siegelman (although in the older version of the story, Riley had allegedly asked only for pictures of campaign events). She presumably possessed this alleged "knowledge" prior to her May 2007 Affidavit, her July 2007 newspaper interview, and her September 2007 Committee interview, but inexplicably did not reference it on any of these occasions. Simpson Interview at 12; "Did Ex-Alabama Governor Get a Raw Deal?" *60 Minutes*, February 24, 2008.

- Despite this shocking "fact" about her spy missions, neither in the original Affidavit, nor in 143 pages of interview transcript, did she ever claim to have met me, spoken to me, or carried out any work on my behalf, even though the apparent point of her Affidavit and interview was to accuse me of wrongdoing in connection with Governor Siegelman.

February 2008 MSNBC Interview

- When questioned about her claims regarding requests to photograph Governor Siegelman, Simpson made disturbing allegations about the Judiciary Committee majority, which either further calls into question Simpson's veracity or suggests that the majority attempted to conceal the absurdity of her allegations:

  ABRAMS: Why have you never mentioned before the, uh, the allegation about Rove and the pictures?

  SIMPSON: Oh, I mentioned it to people. They just did not, um, use it. Because nobody wanted to go into the fact that I had been following Don Siegelman trying to get pictures of him cheating on his wife.

  ABRAMS: But . . . some of your critics have said, "Oh, you know, in front of Congress, et cetera, she had a lot of opportunities. Why hasn't she mentioned this before?"

  SIMPSON: Well, let me explain something to you. I talked to congressional investigators, Dan. And when I talked to those congressional investigators I told them that I had followed Don Siegelman and tried to get pictures of him cheating on his wife. However, they suggested to me that that was not relevant because there was nothing illegal about that and they'd just prefer that it not come up at the hearing that day.

Verdict with Dan Abrams, February 25, 2008.

(4) Simpson has not offered any proof whatsoever of her allegations, and the Committee should require that such proof be produced before giving credence to her accusations.

- *Not a single individual* has corroborated Simpson's story about my "involvement" in the Siegelman investigation, indictment, and conviction. Nor has any individual corroborated her other odd stories about the KKK, the Siegelman/Riley race, and her so-called involvement with various Alabama campaigns in which I was involved. Indeed, multiple trustworthy individuals and public officials have publicly and forcefully denied her allegations – and these individuals and public officials are the mere tip of the iceberg.

- Simpson has provided no evidence that she indeed was asked to take photographs of Governor Siegelman, or even that she attempted to do so in some manner. She has produced no photographs, no meeting or telephone records showing that we communicated, no travel receipts that would prove she was following Governor Siegelman, no gubernatorial travel schedules or itineraries, and no proof whatsoever that I hired her to undertake a surreptitious research effort.

- Indeed, it is highly unlikely that her presence shadowing Governor Siegelman over a lengthy period of time would somehow escape detection by the Governor's security detail.

(5) Simpson's motives in attacking me are murky at best.

- At her interview before this Committee, Simpson was accompanied by Joseph Sandler, the current general counsel to the Democratic National Committee. Simpson Interview at 1-2.

- Simpson has admitted that she assisted "an attorney for [Richard] Scrushy," Art Leach, in attempting to secure a new trial for Scrushy. She also admitted that she has corresponded with John Aaron, an Alabama attorney and "political researcher" to whom she was allegedly introduced by Siegelman, for purposes of "researching" the judge overseeing Siegelman's case. Simpson Interview at 67-80.

- During her interview before the Committee, Simpson admitted that she asked Aaron "to help me write the affidavit," and that Aaron created the first draft. She was "not certain" whether for the final draft, she "start[ed] from scratch" or "start[ed] with Aaron's and change[d] it around[.]" Simpson Interview at 79-81.

- During her interview, Simpson also admitted that her intention in drafting the Affidavit was that it would be given to the Scrushy and Siegelman legal teams via Aaron and her friend Mark Bollinger, who previously served as an aide to a former Democratic Alabama Attorney General. "I had decided to do an affidavit and had done it because [Scrushy's office] had called several times," she said. Simpson Interview at 79-84, 136-138.

APPENDIX C

Exhibit A

Riley's son willing to rebut testimony | TuscaloosaNews.com | The Tuscaloosa News
By Dana Beyerle Montgomery Bureau Chief

Published: Thursday, October 11, 2007 at 3:30 a.m.
Last Modified: Thursday, October 11, 2007 at 12:14 a.m.

MONTGOMERY | Rob Riley Jr. said Wednesday that he would be willing to testify under oath to rebut testimony by a Rainsville lawyer who said she heard him and others discuss influencing the criminal prosecution of former Gov. Don Siegelman.

Rainsville lawyer Jill Simpson told lawyers for the U.S. House Judiciary Committee in testimony released Wednesday that she believes Rob Riley Jr., the son of Gov. Bob Riley, and others conspired in 2002 with the White House to eliminate Siegelman's challenge to Riley's 2006 re-election by influencing a federal case against him.

Rob Riley said Simpson did not tell the truth in her Sept. 14 testimony, which was released Wednesday along with talking points from the Judiciary Committee's majority membership.

"I'm working right now on an affidavit I plan to file with the committee addressing the untruthfulness of Ms. Simpson's testimony," said Rob Riley, a Birmingham lawyer.

When asked if he was willing to testify under oath before the committee, Rob Riley said, "Absolutely." He said he has not been called to testify.

Simpson's hearsay testimony and Rob Riley's willingness to testify puts pressure on the committee to force testimony from the alleged participants in the November 2002 telephone call that Simpson said she overheard.

Carl Grafton, a retired political science professor at Auburn University Montgomery said the committee looking into the Siegelman prosecution could end the speculation by issuing subpoenas.

"You think they would, because the committee is run by Democrats, and it would potentially serve their interests to cast the Republicans in a bad light," Grafton said. "The only thing I imagine is there's something about the story that could come back and bite them."

The House Judiciary Committee was to have conducted a hearing Thursday on allegations that the U.S. Department of Justice targeted Democrats for prosecution. Siegelman and former HealthSouth CEO Richard Scrushy were convicted of government corruption charges and are now in prison.

Melanie Roussell, an information officer with the House Judiciary Committee majority, said there are no plans to subpoena witnesses. Minority counsel for the committee couldn't be reached for comment. Roussell said the committee meeting will be rescheduled because of a death.

Simpson said she believes the targeting occurred after Alabama Republicans, including Business Council of Alabama President William Canary, whose wife, Leura Garrett Canary, is the U.S. Attorney in Montgomery; Riley Jr., and former Democratic Supreme Court Justice Terry Butts got involved.

Simpson said that in the phone call, William Canary said he would get help from then-White House adviser Karl Rove.

Canary and Riley Jr. denied Simpson's version of events.

"Billy Canary has never made those statements at any time in my presence, nor in any private conversations nor in any public conversations," Rob Riley said.

Montgomery lawyer Thomas Gallion III, who said he represents Simpson "on a limited basis," said she has been told not to discuss this matter publicly.

Rob Riley once said he barely knew Simpson, a classmate at the University of Alabama, anything he says has to be taken with a grain of salt, Gallion said.

"Jill Simpson has shown me and I have witnessed with my own eyes she has represented Rob Riley in plaintiff cases and has canceled checks and documents ... and I believe what she says is true," Gallion said. "What they ought to do, everybody involved (on Rob Riley's side), is to go to Washington and testify."

Neither Simpson nor her lawyer, Priscilla Duncan, could be reached for comment Wednesday. Rob Riley said errors in Simpson's testimony led to questions about her overall testimony. In 143 pages of testimony, Simpson said Riley Jr. once mentioned e-mailing something to a "Karl." "I believe that is Karl Rove," Simpson testified.

Riley Jr. said "Karl" was Atlanta attorney Karl Dix.

Dix said in a phone interview he had worked with Rob Riley and Simpson on a Federal Emergency Management Agency cleanup contract. "Rob did give me an e-mail in 2002, and I was the Karl in the email," Dix said.

Rob Riley Jr. said Simpson made other misstatements, including an assertion that he and U.S. District Judge Mark Fuller, who presided over Siegelman's trial, knew each other from their days at the University of Alabama.

Fuller is about eight years older than Riley Jr. and Riley Jr. said he doesn't know Fuller.

Exhibit B

TERRY LUCAS BUTTS
ALABAMA SUPREME COURT JUSTICE (RET.)
ATTORNEY AT LAW

Mailing Address
P.O. Drawer 272
Luverne, Alabama 36049
Email: tlucasbutts@yahoo.com

76 South Glenwood Avenue
Luverne, Alabama 36049

Telephone: (334) 335-2262
Facsimile: (334) 335-2214

STATEMENT OF TERRY LUCAS BUTTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Terry Lucas Butts

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

Notary Public

My Commission Expires:

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

Exhibit C

AFFIDAVIT

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

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

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

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

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

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

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

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

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

Robert R. Riley, Jr.

Robert R. Riley, Jr.

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

Natalie Baskin

Notary Public
My commission expires: 03/02/10

Exhibit D

STATE OF ALABAMA)

JEFFERSON COUNTY)

AFFIDAVIT OF MATTHEW H. LEMBKE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The matters contained herein are true and correct based upon my personal knowledge.

MATTHEW H. LEMBKE

Sworn to and subscribed before me this 22nd day of October, 2007.

(SEAL)

Notary Public

My Commission Expires: July 30, 2009

Exhibit E

The Birmingham News

Affidavit about Siegelman case open to debate

Sunday, July 08, 2007

BRETT J. BLACKLEDGE
News staff writer

An affidavit cited as proof that White House strategist Karl Rove helped arrange the Justice Department prosecution of former Gov. Don Siegelman doesn't actually say Rove was behind the investigation, the lawyer who wrote it said. But that hasn't stopped others from using the affidavit to demand a congressional hearing.

Jill Simpson, the Republican Rainsville lawyer who wrote the affidavit, said in an interview that she is not responsible for how others interpret her sworn statement. She said she tried to accurately represent a conference call she heard in which Rove's name came up, and she said no one definitively said in that call that Rove arranged for Siegelman's investigation.

It's not clear if Rove was being identified in the call as the person behind the investigation or as someone who heard Siegelman already was under investigation, Simpson said.

"You can read it both ways," Simpson said in the interview Friday. "I did it as best I could to factually write it down as exactly as to what was said. And there's two interpretations to it, there's no doubt about that."

The fact that Simpson's affidavit is unclear about Rove's role is significant because her statement has been reported nationally as the first clear link between Rove and the Siegelman case. Democrats and Siegelman supporters have cited Simpson's affidavit as proof that the case was politically motivated, with U.S. Rep. Artur Davis, D-Birmingham, becoming the latest to argue that Siegelman's case should be included with others under congressional review for possible selective prosecution.

And that's fine with Siegelman's lawyers, who say Simpson's claims are not relevant to the appeal of his conviction. A congressional review, however, could help him win a new trial.

"I don't know whether what she says is true or not. And it doesn't really matter as to where I am or what my job is right now," Siegelman lawyer Vince Kilborn said. "But if there are documents produced, let's say, in the congressional investigation, and they're exculpatory and they have not been produced to the defense, that's a new trial, in my opinion."

Siegelman and HealthSouth founder Richard Scrushy remain in an Atlanta federal prison following their sentencing on corruption convictions last month.

Close election:

The national buzz over possible White House influence in the Siegelman investigation began several weeks ago, after Simpson's affidavit was distributed to several national publications. Simpson said Scrushy lawyer Art Leach asked her earlier this year to write the affidavit.

In her affidavit, written in May, Simpson said fellow Republicans during a conference call on Nov. 18, 2002, discussed concerns that Siegelman would continue to be a political problem in the future. That was days after the general election, and Siegelman and Bob Riley, who would go on to win the governor's race, were involved in a heated recount battle because of the election's razor-thin margin.

Simpson's affidavit said Bill Canary, a Riley adviser, told Riley's son on the call that Siegelman wasn't likely to be an issue. Canary is the husband of U.S. Attorney Leura Canary of Montgomery, whose staff handled the Siegelman investigation.

"William `Bill' Canary told him not to worry, that he had already gotten it worked out with Karl and Karl had spoken with the Department of Justice and the Department of Justice was already pursuing Don Siegelman," Simpson said in the affidavit.

The federal investigation of Siegelman was well publicized before the November 2002 conference call Simpson describes in her affidavit. Nearly 10 months earlier, The Birmingham News reported the federal investigation of Siegelman.

The case received extensive media coverage throughout that year, including articles about Leura Canary stepping aside from the investigation, and arguments by Siegelman and his lawyers that politics prompted the investigation.

Media inferences:

While Simpson does not say it explicitly in her carefully worded affidavit, her statement about Rove has led several national media outlets and Siegelman supporters to infer that she heard Canary say Rove arranged for the Justice Department investigation of Siegelman. The result has been a number of articles characterizing Rove's role in different ways, even using partial quotes from Simpson's affidavit at times to more clearly link Rove to the case.

Time magazine: "A longtime Republican lawyer in Alabama swears she heard a top GOP operative in the state say that Rove `had spoken with the Department of Justice' about `pursuing' Siegelman."

Los Angeles Times: "Just this month, a Republican lawyer signed a sworn statement that she had heard five years ago that Rove was preparing to politically neutralize the popular Siegelman." The Times in the same article states that Simpson's affidavit said Rove and others "would make sure the Justice Department pursued the Democrat so he was not a political threat in the future."

The New York Times editorial: "The most arresting evidence that Mr. Siegelman may have been railroaded is a sworn statement by a Republican lawyer, Dana Jill Simpson. Ms. Simpson said she was on a conference call in which Bill Canary, the husband of the United States attorney whose office handled the case, insisted that `his girls' would `take care of' Mr. Siegelman. According to Ms. Simpson, he identified his `girls' as his wife, Leura Canary, and another top Alabama prosecutor. Mr. Canary, who has longstanding ties to Karl Rove, also said, according to Ms. Simpson, that he had worked it out with `Karl.'"

Hearing requested:

Davis, in a letter requesting a congressional hearing, also went further in linking Rove to the Siegelman case than Simpson did in her affidavit. He cited The New York Times editorial in his request to House leaders Friday that Siegelman's case be included in a broader congressional investigation of selective political prosecutions.

"Most explosively, an attorney who worked in the 2002 campaign against Siegelman has sworn an affidavit claiming that she participated in a November 2002 conference call in which an influential Republican claimed that Karl Rove had given assurances that Siegelman would be indicted."

Simpson said in her interview Friday that she is not responsible for how Davis and the media characterize her affidavit.

Davis held a different view of Simpson's affidavit in an interview last month, noting that her statement did not prove Siegelman's case was politically motivated. "All Jill Simpson can testify to is what she says a bunch of people said during a phone conversation. Rove never came on the line," Davis said last month. "That's why the affidavit doesn't tell you that much."

Davis on Friday said he has not changed his position, and he once again downplayed Simpson's affidavit.

"I don't put much stock in the affidavit as critical proof," he said. "The affidavit is one piece of proof ... but I don't think it is the most important piece of proof in this matter. It doesn't speak to Karl Rove. The question is whether Karl Rove ever did or said anything to instigate this investigation."

A bid for accuracy:

Simpson said that while she personally believes Rove had a role in the federal investigation of Siegelman, she was careful in her affidavit not to overstate what was said in the conference call, despite complaints from some who wanted her to more clearly link Rove to the case. Instead, Simpson said, she tried to factually recount the call, and in doing so allowed for the possibility that Canary was saying Rove heard about the investigation or Rove arranged for it.

"It can be either of the two," Simpson said. "And mind you, the fact of the matter is, I've heard from half a dozen people, `Well, why can't you have said, blah blah blah blah blah?' And I'm like, `I was trying to be factual.'"

Simpson said she's also troubled by the fact that the purpose of her affidavit is being ignored by some who have portrayed it as focusing on Rove's role in the Siegelman case. Rove is mentioned in only one of the 22 paragraphs, she said, in an affidavit that was written to disclose what she believes is another lawyer's conflict of interest.

Simpson claims Terry Butts, one of Scrushy's lawyers, had a conflict of interest in the corruption case because he earlier had worked for Riley and against Siegelman.

"To be honest with you, I wrote it about Terry Butts. I ended up writing an affidavit about it eventually. And I stand on it," she said in the interview.

In her affidavit, Simpson states that Butts was involved in the conference call and said he would persuade Siegelman to drop his challenge of Riley's 2002 victory. Butts and Canary have said the phone call Simpson refers to in the affidavit never happened.

"I can't have a conflict if the conversation didn't happen," Butts said Saturday.

Washington correspondent Mary Orndorff contributed to this report. bblackledge@bhamnews.com

© 2007 The Birmingham News

© 2007 al.com All Rights Reserved.

Exhibit F

Department of Justice

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

FOR IMMEDIATE RELEASE

www.usdoj.gov/usao/alm

CONTACT: Retta Goss
Telephone (334) 223-7280
Fax (334) 223-7560
Cell (334) 546-1930

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit G

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 4, 2007

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter, dated July 17, 2007, which requested information and documents in connection with the Committee's oversight inquiry regarding allegations of political interference in the matters of United States v. Cyril H. Wecht (W.D. Pa.), United States v. Georgia Thompson (E.D. Wis.), and United States v. Don Siegelman (M.D. Ala.). We are sending similar responses to the other Members who joined in your letter to us. We are also sending copies of this letter to the Chairman and Ranking Minority Member of the Senate Judiciary Committee, who requested information regarding the Georgia Thompson matter in a letter, dated April 10, 2007.

In response to your request, we searched for documents in the relevant U.S. Attorney's Offices, the Criminal Division, the Office of the Deputy Attorney General for the Thompson and Wecht matters, and the Executive Office for U.S. Attorneys and the Office of the Attorney General for the Thompson matter. While our search is continuing and we will supplement our response if additional documents are found, we have not identified any documents related to these three cases containing communications from White House staff, Members of Congress, congressional staff, or state and local political party officials or their staff.

The Department has substantial confidentiality interests in predecisional memoranda, analysis, and other deliberative communications concerning our decisions whether to prosecute individuals. Prosecution memoranda contain frank assessments of evidence and witnesses, recommendations, and evaluations of legal issues. We believe that their disclosure would chill the candid internal deliberations that are essential to the discharge of our law enforcement responsibilities. Moreover, the disclosure of these types of materials would adversely impact individual due process and privacy interests. Finally, disclosure would raise substantial separation of powers concerns and risk compromise to the integrity of the criminal justice process. The longstanding Department position was articulated by the Attorney General (as Counsel to the President) in a letter to Congressman Burton regarding the President's assertion of executive privilege over prosecution memoranda:

> [C]ongressional access to these kinds of sensitive prosecutorial decisionmaking documents would threaten to politicize the criminal justice process and thereby threaten individual liberty. The Executive Branch is appropriately concerned that the prospect of congressional review of prosecution or declination memoranda might lead prosecutors to err on the side of investigation or prosecution solely to avoid political criticism. This would, in turn, undermine public and judicial confidence in our law enforcement processes.

Letter to the Honorable Dan Burton, Chairman, Committee on Government Reform, U.S. House of Representatives, from Alberto R. Gonzales, Counsel to the President (Jan. 10, 2002).

Also based on long-standing policy and many of the same considerations, we do not provide non-public information about pending law enforcement matters. We want to avoid any perception that the conduct of our criminal investigations and prosecutions is subject to political influence. Disclosures of such non-public information could also compromise our law enforcement efforts by revealing our investigative plan and prosecution priorities and damage the privacy and due process interests of individuals involved. Accordingly, we are not providing non-public documents relating to our ongoing investigations and prosecutions of Dr. Wecht and Mr. Siegelman. We believe that the publicly available materials in those cases provide important information that we hope will be helpful to the Committee.

In United States v. Siegelman, Mr. Siegelman was tried and convicted by a jury of federal funds bribery (18 U.S.C. § 666), conspiracy to commit mail fraud (18 U.S.C. § 371), honest services mail fraud (18 U.S.C. §§ 1341 and 1346), and obstruction of justice (18 U.S.C. § 1512). Subsequently, Mr. Siegelman filed an appeal of his conviction and sentence in the United States Court of Appeals for the Eleventh Circuit. This case was brought by career prosecutors, following the May 2002 recusal of U.S. Attorney Leura Canary, based upon the law and the evidence. The appeal is pending and has not yet been briefed by the parties. Although, as discussed above, we cannot provide deliberative documents relating to the charging decision in this matter, we have enclosed publicly-available materials which provide background on the government's position in the case. Presently, we are continuing to search for potentially responsive documents, and we will supplement this response when that process is completed.

The focus of recent controversy has been a May 2007 affidavit signed by Alabama attorney Jill Simpson. Ms. Simpson signed the affidavit almost a year after Mr. Siegelman's conviction, and it has never been filed in the case. In the affidavit, Ms. Simpson claims to have overheard statements she attributes to U.S. Attorney Leura Canary's husband. The national media has interpreted the alleged statements as linking the prosecution of former Governor Siegelman to Karl Rove.

At the time Ms. Simpson alleges the purported statements were made, Mr. Siegelman was already under federal investigation. The existence of the investigation had been widely reported in newspapers and television reports, some released more than ten months before the alleged conversation. The alleged conversation described by Ms. Simpson has been denied by all of the alleged participants except Ms. Simpson. Indeed, even Mr. Siegelman states that Ms. Simpson's affidavit is false as it relates to him. Moreover, according to Ms. Simpson, she met with Mr. Siegelman and his co-defendant Richard Scrushy for several months before signing the statement at their urging. She also claims to have provided legal advice to them. She contends she drafted but did not sign a motion filed by Mr. Scrushy seeking to have the federal judge removed from the case.

Finally, your letter mentions allegations of jury tampering that were raised in the case. The defendants made these allegations the basis of several motions for relief. The Court conducted an extensive investigation into the allegations of juror misconduct, conducting two evidentiary hearings and calling all twelve jurors to the stand to answer numerous questions under oath. Following its independent investigation, the Court found no basis for a new trial under the governing authorities. The Court's order on the issue is included among the documents furnished to you with this letter. The Court's ruling on that issue is encompassed by the appeal now pending in the Eleventh Circuit Court of Appeals.

In United States v. Wecht, the grand jury returned an indictment on January 20, 2006, and trial is now set for January 28, 2008. Dr. Wecht is charged in 84 counts with using government resources for his private gain and defrauding his private clients in violation of 18 U.S.C. §§ 1341, 1343, 1346, and 666. Although trial was originally scheduled for October 2006, a date requested by Dr. Wecht, this initial trial date was stayed by the U.S. Court of Appeals for the Third Circuit while it considered the government's interlocutory appeal of an order unsealing certain personnel records of an agent involved in the investigation.

Enclosed are publicly-available materials which provide background on the government's position in the Wecht case. These materials also serve to correct several factual inaccuracies which appear in your letter about this case. First, your letter states that the U.S. Attorney's Office "urged the courts to set the trial in October, 2006, a month before the congressional elections," and that the trial was postponed "only after the federal appeals court agreed to hear motions by Dr. Wecht's attorneys." Both allegations are demonstrably inaccurate. The enclosed transcript, dated February 10, 2006, states:

> **Mr. Johnson [Dr. Wecht's counsel]**: One thing that will determine when it would be timely to go to trial from the standpoint of the defense will have to do with discovery because there will be a certain amount of discovery that we need before we can file pretrial motions, number one . . . I think that we would probably not be ready to go to trial, based on our need to review the documents and file motions, until at the very earliest September. . . .

The Court: Then I would also like your proposed order to choose one of these trial dates with the knowledge that you have got to hold this date . . . So the first date you get is September 5th. Second date you get is September 11th. The third date you get is October 17th. Does the Government need more than those three dates?

Mr. Stallings [Government counsel]: No, your Honor. Either of those would be fine.

The Court: You don't need – you just have to work together. Are those sufficient dates for the Defendant to pick a date that works?

Mr. Johnson: They are, your Honor, yes, Sir.

Subsequently, Dr. Wecht's counsel, not the government, selected the October 2006 trial date, which was embodied in a joint pretrial order filed on March 1, 2006. Moreover, Dr. Wecht never filed a motion to continue the trial. Instead, the government, Dr. Wecht, and third party media outlets filed various interlocutory appeals. The Third Circuit, on its own initiative, stayed the trial in connection with the government's appeal and the media outlet's appeal, not the defendant's interlocutory matter. (See District Court Order, dated June 14, 2007, stating "Defendant sought, but did not receive, from the Court of Appeals, a 'stay [of] district court proceedings pending disposition of petition for writ of mandamus.' Instead, the Court of Appeals stayed only the trial, and the Court's stay order was not filed at that Court's case number for defendant's mandamus action (06-3704), but only at the case numbers for the other related appeals.").

Your letter also alleged that the U.S. Attorney's Office "intended to arrest Dr. Wecht and subject him to a 'perp walk,' even though Dr. Wecht and his lawyers repeatedly offered to self-surrender," and suggested that only the intervention of the Deputy Attorney General convinced the U.S. Attorney to reassess this decision. As court filings demonstrate, this allegation is inaccurate. On January 18, 2006, First Assistant U.S. Attorney Robert Cessar informed Dr. Wecht's then-counsel, J. Alan Johnson, that Dr. Wecht would be issued a summons to appear, not arrested on a warrant. (See Cessar affidavit ¶¶ 6-7). However, Dr. Wecht does not claim to have contacted the Office of the Deputy Attorney General about this issue until January 19, 2006. Id.

Finally, the sole source cited in your letter to support the allegations of a threatened arrest and "perp walk" is an article quoting extrajudicial statements of Dr. Wecht's counsel. The district court has since referred the matter of counsel's extrajudicial statements in the case to the Disciplinary Board of the Supreme Court of Pennsylvania for a determination of whether they violate the Rules of Professional Conduct. (See District Court Order, dated June 20, 2007). Indeed, as demonstrated in the attached filings, a significant concern in this case has been defense counsel's repeated extrajudicial statements, and not the single announcement made by the U.S. Attorney upon Dr. Wecht's indictment.

With respect to your inquiry regarding United States v. Georgia Thompson, Ms. Thompson, a former official in the State of Wisconsin Department of Administration, was tried and convicted by a jury of honest services mail fraud (18 U.S.C. §§ 1341 and 1346) and misapplication of funds (18 U.S.C. § 666). As you know, the United States Court of Appeals for the Seventh Circuit recently issued a written opinion reversing the conviction and entering a judgment of acquittal. We appreciate the Committee's interest in information about the decision to prosecute in this case, and the U.S. Attorney, Steven Biskupic, is prepared to provide an informational, untranscribed briefing to Committee staff and answer their questions about that matter. This briefing can be scheduled at a mutually convenient time in the near future.

In response to your request, we searched for responsive documents in the U.S. Attorney's Office in the Eastern District of Wisconsin, the Executive Office for U.S. Attorneys (EOUSA), the Criminal Division, the Office of the Attorney General, and the Office of the Deputy Attorney General. As we have discussed with Committee staff, the U.S. Attorney's Office has advised that the documents responsive to your request for memoranda and other materials concerning the Thompson case are voluminous and the processing of those materials would require an extensive commitment of resources and time. They include pleadings, exhibits, correspondence, briefs, legal memoranda, transcripts, appellate materials, discovery documents, and other records, many of which are publicly filed and available through the PACER docketing system. We could process these documents if necessary, but given their volume and ready availability on PACER, the Committee may prefer to obtain them from that source.

In addition to the foregoing and the documents already provided to the Committee on May 17, 2007, enclosed are 27 pages of documents responsive to your request. We have redacted information that would implicate the privacy interests of Department of Justice employees, such as the names of technical support staff who conducted the searches in response to your request. We have also redacted non-public information about matters unrelated to the Thompson case and a small amount of text that implicates the privacy interests of staff in the U.S. Attorney's Office. We have also not included documents which contain grand jury information, pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure. As previously indicated, our search has not located documents containing communications from White House staff, Members of Congress, congressional staff, or state and local political party officials and their staff related to this matter

Our search for materials responsive to your request concerning the Georgia Thompson case yielded a number of other documents which we believe reflect deliberations and communications implicating substantial confidentiality interests of the Department. These include U.S. Attorney Biskupic's notes and one letter written in the course of the investigation memorializing conversations with attorneys of persons of interest who were not indicted; pre-indictment documents, including emails, letters, and memoranda, regarding the resolution of a potential conflict of interest which arose concerning individuals who were investigated, but never indicted;

and a memorandum from U.S. Attorney Biskupic to the Criminal Division requesting authorization to issue a media subpoena pursuant to 28 C.F.R. § 50.10, and a subsequent 2-page email on this topic.

We hope that the documents we are presently producing, in addition to an untranscribed briefing provided by U.S. Attorney Biskupic, will satisfy your inquiry. However, we are prepared to confer with Committee staff if you have further information needs. Please do not hesitate to contact this office if we may be of further assistance on this or any other matter.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Lamar Smith
Ranking Minority Member

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee

The Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee

Exhibit H

Siegelman aides contradict main part of Simpson affidavit

The Associated Press State & Local Wire
July 19, 2007 Thursday 11:14 PM GMT

Copyright 2007 Associated Press
All Rights Reserved
The Associated Press State & Local Wire

July 19, 2007 Thursday 11:14 PM GMT

SECTION: STATE AND REGIONAL
LENGTH: 703 words
HEADLINE: Siegelman aides contradict main part of Simpson affidavit
BYLINE: By BOB JOHNSON, Associated Press Writer
DATELINE: MONTGOMERY Ala.

BODY:

An affidavit cited amid claims that former Gov. Don Siegelman may have been the target of a politicized probe contains an assertion that even the Siegelman camp discounts that he dropped his call for a recount in the 2002 governor's race because an apparent dirty trick was about to be exposed.

The affidavit by attorney Jill Simpson of Rainsville, a campaign worker in Republican Bob Riley's race against Siegelman, has set off controversy over its statement indicating GOP political operatives played a role in the Justice Department's pursuit of the prominent Democrat.

But most of the affidvit is devoted to an entirely different matter a man believed to be a Democrat putting Riley signs near the site of a planned Ku Klux Klan rally, and how the threat to expose the apparent dirty trick forced Siegleman to concede.

Siegleman aides at the time say it didn't happen that way, although they feel the more widely reported part of Simpson's affidavit is on target.

Montgomery attorney Joe Espy, who represented Siegelman in the 2002 election challenge, said Thursday he doesn't recall any discussion of a Klan rally in the days before Siegelman dropped his challenge.

"I never heard that. I was never around any talk like that," Espy said.

Espy said he remembers Siegelman dropped the challenge for several reasons, including: "He had concern about tearing the state up."

He said Siegelman was also worried about the expense of a protracted election challenge and that the final decision would be made by the Republican majority Alabama Supreme Court.

Simpson did not return phone calls seeking comment Thursday and her office said media calls to Simpson are being referred to Montgomery attorney Priscilla Duncan. Duncan did not immediately return a call seeking comment.

Siegelman, convicted of bribery and other charges with former HealthSouth CEO Richard Scrushy, is in federal prison and was not available for comment. But in an interview prior to entering prison, he told the Montgomery statehouse reporter for New York Times regional papers in Alabama that he dropped out because he did not want a repeat of Al Gore's challenge of the 2000 presidential race.

Siegelman also has praised other parts of Simpson's affidavit and said it supports his belief that his prosecution was politically motivated. The lead federal prosecutor in Siegelman's trial, Louis Franklin, issued a lengthy statement

this week denouncing claims of a politicized prosecution and noted that even Siegelman had discredited the part of the affidavit about the Riley signs at a Klan rally.

Siegelman's campaign press secretary in 2002, Rip Andrews, said he doesn't remember any discussion of a Klan rally.

But he said he doesn't discount the substance of Simpson's affidavit.

"It made sense that the Republicans would do anything to get Siegelman to concede," Andrews said.

In the affidavit, Simpson said she took pictures of the man placing Riley campaign signs near the site of the planned Klan rally. And she recounts that attorney Terry Butts planned to use that information to get Siegelman to drop his challenge.

She said in the affidavit she received a call later that day from Riley's son and campaign manager, Rob Riley, who told her: "Terry Butts had talked with Don Siegelman and that Don Siegelman would be resigning before the ten o'clock news."

Siegelman did resign that evening, but along with his dismissal of her account, Butts also has denied that Siegelman told him the Riley signs at the Klan site were any factor in his concession.

Butts also said an alleged conference call described by Simpson never took place. Rob Riley has said he doesn't remember any such call. Simpson's affidavit says the indication of political pressure in the Siegelman probe was made in that call.

University of Alabama political scientist Bill Stewart said it would be unlikely a veteran politician like Siegelman would drop out because of the kind of prank that happens during many campaigns.

"I can't imagine someone dropping out for something like this," Stewart said. "Those sorts of things happen in campaigns. It's not something to be proud of, but on the scale of things that have happened in Alabama campaigns I don't find it to be very important."

LOAD-DATE: July 20, 2007

the weekly Standard

A Conspiracy So Lunatic...
Only 60 Minutes could fall for it.
by John H. Hinderaker
05/26/2008, Volume 013, Issue 35

Jill Simpson is an unusual woman. A lawyer, she has scratched out an uncertain living in DeKalb County, Alabama. Fellow DeKalb County lawyers describe her as "a very strange person" who "lives in her own world." The daughter of rabid Democrats, she has rarely if ever been known to participate in politics as even a low-level volunteer. Yet today, she is a minor celebrity who is unvaryingly described in the press as a "Republican operative." Those who know her in DeKalb County scoff at the idea that she is a Republican at all.

Recently, Simpson's house and law office were on the auction block. Rumor has it that she is leaving DeKalb County for good and heading for the suburbs of Washington, D.C. Jill Simpson, who barely got by in Alabama, is now toasted by the national Democratic party and featured on network and cable news. All this because she has testified--without a shred of supporting evidence--to a conspiracy so vast as to be not just implausible, but ridiculous.

Simpson claims to have participated in a phone conversation with several Alabama Republicans in which she was made privy to a plot involving the Republican governor of Alabama, Bob Riley, a former justice of the Alabama Supreme Court, a federal judge, two United States attorneys, several assistant United States attorneys, the Air Force, and, apparently 12 jurors, to "railroad" former governor Don Siegelman into his 2006 conviction for bribery and mail fraud. Every person whose name Simpson has invoked has labeled her story a fantasy, including Siegelman; she claimed to have played a key role both in his giving up his unsuccessful contest of the 2002 gubernatorial election and in his defense of the criminal charges against him.

Normally one might expect a person of uncertain mental health who alleged such a comprehensive conspiracy to be ushered quietly offstage. Instead, in late February, CBS's *60 Minutes* gave her a starring role. This can be explained only by the fact that Simpson included in her fable, as she related it to CBS, a final conspirator: Karl Rove, who, according to Simpson, orchestrated the plot against Siegelman.

In her *60 Minutes* interview, Simpson claimed to have been Rove's secret agent in Alabama. She said that during Siegelman's term as governor of Alabama, Rove had asked her to follow Siegelman around and try to get photographs of him "in a compromising sexual position" with one of his aides. This led to one of the great moments in recent broadcast history:

> *60 Minutes*'s Scott Pelley: Were you surprised that Rove made this request?
> Simpson: No.
> Pelley: Why not?
> Simpson: I had had other requests for intelligence before.

> Pelley: From Karl Rove?
> Simpson: Yes.

Pelley was at a crossroads: He knew that either (1) he was on the verge of uncovering a whole series of Rovian plots, the stuff of which Pulitzers are made, or (2) he was talking to a lunatic. Intuiting, no doubt, which way the conversation was likely to go, Pelley discreetly chose not to inquire further.

Simpson can offer no evidence that she has ever spoken to or met Karl Rove. Moreover, when she told her story of the alleged conspiracy against Don Siegelman to John Conyers's House Judiciary Committee staff, she said that she heard references to someone named "Carl" in the aforementioned telephone conversation--she made the natural inference that this must be Karl Rove--but never offered the blockbuster claim that Rove himself had recruited her to spy on Siegelman. Neither in the affidavit that she submitted to the committee, nor in 143 pages of sworn testimony that she gave to the committee's staff, did she ever claim to have met Karl Rove, spoken to Karl Rove, or carried out any secret spy missions on his behalf, even though the whole point of her testimony was to try to spin out a plot against Siegelman that was ostensibly led by someone named "Carl."

60 Minutes chose to highlight Simpson's claim that she was Rove's secret agent without telling its viewers that this sensational allegation had been altogether absent from her sworn accounts. Subsequently, MSNBC's Dan Abrams invited Simpson to repeat her slur against Rove. This prompted Rove to write to Abrams, posing a series of questions about whether Abrams had used elementary journalistic methods to check the accuracy of Simpson's account.

Rove's letter drew a response from Abrams:

> [Y]ou wrote, "Did it not bother you Ms. Simpson failed to mention [in her sworn statement to House Judiciary Committee staff] the claim she made to CBS for their Feb. 24, 2008 story, that you then repeated on Feb. 25th?"
>
> Fair question. Which is why I asked her the following on Feb. 25, 2008: ABRAMS: And why have you never mentioned before the allegations of Rove and the pictures? . . .
>
> SIMPSON: Well, let me explain something to you. I talked to congressional investigators, Dan. And when I talked to those congressional investigators I told them that I had followed Don Siegelman and tried to get pictures of him cheating on his wife.
>
> However, they suggested to me that that was not relevant because there was nothing illegal about that and they'd just prefer that not come up at the hearing that day.

Put aside the fact that before she was interviewed by House Democratic staffers, Simpson submitted an affidavit on the alleged conspiracy. In her affidavit, she did not claim that she had ever met Rove, let alone been his secret agent in Alabama. What MSNBC found plausible was Simpson's suggestion that House Democratic staffers got their hands on the story that Karl Rove had tried to get compromising photographs of the governor of Alabama and they hushed it up! The credulity of modern journalists apparently knows no bounds.

Simpson's story is unbelievable and contradictory on so many levels that it cannot bear a moment's inspection. (Wholly unexplained, for example, is why, if Rove or anyone else wanted to spy on the governor of Alabama, he would assign the task to a conspicuously large redhead with no experience

as an investigator and no ties to the Republican party, rather than hire a professional investigator.) But that has not prevented her from being hailed as a hero by the Democratic party. Citing her testimony, John Conyers has threatened to subpoena Karl Rove to testify before his committee. Siegelman himself has called her a "great American," while simultaneously acknowledging that her story, insofar as it claims a relationship with him, is false.

Siegelman's embrace of Simpson is understandable. He is facing seven years in a federal prison; any port in a storm. But what explains CBS's and MSNBC's decision to peddle her fable?

Karl Rove has become the man who cannot be libeled. Any story that includes his name is treated as self-authenticating, requiring neither supporting evidence nor the barest plausibility. Having committed the unforgivable sin of contributing to two successful Republican presidential campaigns, Rove has become, for American media, the equivalent of an outlaw, possessing no rights that must be respected.

John H. Hinderaker is a contributor to the blog Power Line *and a contributing writer to* The Daily Standard.

© Copyright 2008, News Corporation, Weekly Standard, All Rights Reserved.

Exhibit J

Sunday, February 24, 2008

ALGOP Statement Regarding Jill Simpson's Accusations to Air on 60 Minutes

Statement by Alabama Republican Party Chairman Mike Hubbard on the Dana Jill Simpson Accusations Aired by CBS' 60 Minutes

CBS News and 60 Minutes' disdain for the Republican Party brought them embarrassment when they ran a bogus and fraudulent story about President Bush and his National Guard record in the fall of 2004 – ultimately admitting to not having followed "basic journalistic principles". It appears that same revulsion for the GOP is bringing them embarrassment once again as they air yet another fiction. Today, the staff of the New York Times must be relieved they are not alone in having their liberal political bias examined on the national stage."

It is becoming apparent that Dana Jill Simpson will fabricate any claim in order to extend her 15 minutes in the public spotlight. As the Associated Press pointed out this week, she has never before mentioned her most recent accusations about Karl Rove '...in spite of testifying to congressional lawyers for hours last year, submitting a sworn affidavit and speaking extensively with reporters'. This is not the first time someone has noticed that her story has changed (see attached). I am sure it will not be the last.

"Our staff has done an exhaustive search of Alabama Republican Party records going back several years, and we can find not one instance of Dana Jill Simpson volunteering or working on behalf of the Alabama Republican Party – as stated by 60 Minutes reporter Scott Pelley. Nor can we find anyone within the Republican Party leadership in Alabama who has ever so much as heard of Dana Jill Simpson until she made her first wave of accusations last summer in an affidavit originally released only to the New York Times.

###

Paid for by the Alabama Republican Party * P.O. Box 55628 * Birmingham, AL * 35255

Signup for customized GOP.com email at: https://www.gop.com/secure/Signup.aspx

APPENDIX D

Department of Justice

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

FOR IMMEDIATE RELEASE
Wednesday, July 18, 2007
www.usdoj.gov/usao/alm

CONTACT: Retta Goss
Telephone (334) 223-7280
Fax (334) 223-7560
Cell (334) 546-1930

MIDDLE DISTRICT OF ALABAMA'S RESPONSE TO ERRORS IN SIEGELMAN/SCRUSHY NATIONAL NEWS ACCOUNTS

This is to respond to recent articles and editorials published in various newspapers and other media pertaining to the convictions and recent sentencings of former Alabama Governor Don Siegelman and former HealthSouth CEO Richard Scrushy. These articles and editorials have called into question the legitimacy of the motivation for prosecuting these individuals. They contain factual errors and omissions that portray an inaccurate and misleading version of the events leading to the convictions.

Each of these accounts ignores and omits numerous significant facts, including the following:

1. that the career prosecutors (i.e., not political appointees) handling the investigation and case after U.S. Attorney Leura Canary's recusal have issued statements unequivocally denying that Karl Rove or anyone from the Justice Department pushed them to bring charges or pursue them to conviction (Attachments 6 and 12);

2. that the purported telephone conversation described in an affidavit by Dana Jill Simpson has been denied by all alleged participants but Ms. Simpson and, indeed, even Mr. Siegelman denies those portions of Ms. Simpson's affidavit that relate to him and explain Ms. Simpson's version of the basis for Mr. Siegelman dropping his 2002 re-election loss protest (Attachments 5 and 15);

3. that Mr. Siegelman was already under investigation more than ten months before the alleged conference call took place, before Ms. Canary became U.S. Attorney, and the investigation had been widely reported (Attachments 2 and 6);

4. that the investigation was actually spurred by evidence uncovered by an investigative reporter for The Mobile Press-Register and a series of articles

written by him (Attachments 6 and 8);

5. that Ms. Canary had already voluntarily removed herself from the case more than six months before Mr. Canary allegedly assured everyone that his "girl," Ms. Canary, would take care of Mr. Siegelman (Attachments 3, 6 and 7);

6. that Ms. Simpson's affidavit may have been motivated by her relationship with a disappointed bidder who lost out on a $7.1 million state contract awarded by Governor Riley to a competitor with a lower bid (Attachments 5 and 14);

7. That Ms. Simpson first told Mr. Scrushy's lawyers of the alleged incidents made the basis of her affidavit in February 2007, and she prepared the affidavit at their urging, meeting with Scrushy and his lawyers on several occasions during the months before she signed her affidavit on May 21, 2007 (Attachments 1, 9 and 10); yet, the reporters are not exploring her relationship with Scrushy and Siegelman and their role in the affidavit; and

8. that Ms. Simpson's affidavit has not been filed by Mr. Siegelman or Mr. Scrushy in the actual court case, the allegations of selective prosecution having been raised by Mr. Siegelman solely in the media (Attachments 1, 9 and 13).

* * * * * * *

Additional explanation regarding these facts and omissions follow.

Don Siegelman, former Governor of the State of Alabama, and Richard Scrushy, former HealthSouth CEO, were sentenced and sent to prison three weeks ago. More than a year before, in June 2006, Mr. Siegelman and Mr. Scrushy were convicted by a federal jury of twelve of their peers of bribery, honest services mail fraud, and conspiracy. Mr. Siegelman was also convicted of obstruction of justice. Before that, a federal grand jury independently reached the same conclusions and indicted them on those and other charges.

Nonetheless, many news organizations have seized upon one woman's tenuous allegations, contained in an affidavit written in May 2007 – almost a year after Mr. Siegelman's conviction – and interpreted her unsubstantiated claims into a conspiracy that allegedly links Mr. Siegelman's prosecution to Karl Rove. The claims published by several national publications make claims far exceeding the original allegations of the affidavit, and at the same time inexplicably omit extremely pertinent facts.

The affidavit, made by Rainsville, Alabama, attorney Dana Jill Simpson (Attachment 1), focuses on statements allegedly made by William "Bill" Canary, husband of the U.S. Attorney for the Middle District of Alabama. Mr. Canary is identified in the affidavit as an advisor to Bob Riley, then a candidate for Governor. Ms. Simpson claims that Mr. Canary stated in a post-election November 2002 telephone conversation that he had "gotten it worked out with Karl and

Karl had spoken with the Department of Justice and the Department of Justice was already pursuing Don Siegelman."

Ms. Simpson was recently interviewed and, according to a story by Brett J. Blackledge appearing in The Birmingham News on July 8, 2007 (Attachment 2), Ms. Simpson cannot say whether Rove was being identified in the call as the person behind the investigation or simply as someone who heard that Siegelman was already under investigation. She admitted that the alleged conversation described in her affidavit could be interpreted either way. She also stated that her affidavit does not say, and was not intended to say, that Rove was behind the investigation. In fact, as the article points out, nearly ten months before the alleged November 2002 conversation took place, The Birmingham News reported that Siegelman was under federal investigation. Moreover, the investigation was widely reported throughout the State of Alabama prior to the election. In fact, eight months earlier, in March 2002, Siegelman and his counsel, David Cromwell Johnson, convened a press conference about the investigation and, using caged canaries as a prop, demanded that Ms. Canary recuse herself from the case (*see* Attachment 3 at p. 2). That press conference was broadcast on new reports throughout the state.[1]

In any event, relying on the same affidavit, the national media has published:

Time Magazine: "A longtime Republican lawyer in Alabama swears she heard a top GOP operative in the state say that Rove 'had spoken with the Department of Justice' about 'pursuing' Siegelman, with help from two of Alabama's U.S. attorneys." Adam Zagorin, *Rove Linked to Prosecution of Ex-Alabama Governor*, Time, June 1, 2007.

The New York Times article by Adam Nossiter: "The lawyer, Jill Simpson, claims to have heard a top Alabama Republican operative with longstanding links to Mr. Rove boast over the phone in 2002 that Mr. Siegelman's political career would soon be scuttled." Adam Nossiter, *Ex-Governor Says Conviction Was Political*, The New York Times, June 27, 2007.

The New York Times editorial: "The most arresting evidence that Mr. Siegelman may have been railroaded is a sworn statement by a Republican lawyer, Dana Jill Simpson. Ms. Simpson said she was on a conference call in which Bill Canary, the husband of the United States attorney whose office handled the case, insisted that 'his girls' would 'take care of' Mr. Siegelman. According to Ms. Simpson, he identified his 'girls' as his wife, Leura Canary, and another top Alabama prosecutor. Mr. Canary, who has longstanding ties to Karl Rove, also said, according to Ms. Simpson, that he had worked it out with

---

[1] Three days after Mr. Blackledge's article was published, on July 11, 2007, Ms. Simpson issued a new statement which was published in *The Montgomery Independent* (Attachment 4). In her latest statement, Ms. Simpson addresses the Blackledge article and attempts to recede from her position by stating what she assumed Mr. Canary allegedly meant by the comments she attributes to him.

'Karl.'" *Questions About a Governor's Fall,* The New York Times, June 30, 2007.

Each of these accounts ignores and omits numerous significant facts, including for instance:

1. that the career prosecutors (i.e., not political appointees) handling the investigation and case after Ms. Canary's recusal have issued statements unequivocally denying that Karl Rove or anyone from the Justice Department pushed them to bring charges or pursue them to conviction (Attachments 6 and 12);

2. that the purported telephone conversation has been denied by all alleged participants but Ms. Simpson and, indeed, even Mr. Siegelman denies those portions of Ms. Simpson's affidavit that relate to him and explain Ms. Simpson's version of the basis for Mr. Siegelman dropping his 2002 re-election loss protest (Attachments 5 and 15);

3. that Mr. Siegelman was already under investigation more than ten months before the alleged conference call took place, and the investigation had been widely reported (Attachment 2);

4. that the investigation was actually spurred by evidence uncovered by an investigative reporter for The Mobile Press-Register and a series of articles written by him (Attachments 6 and 8);

5. that Ms. Canary had already voluntarily removed herself from the case more than six months before Mr. Canary allegedly assured everyone that his "girl," Ms. Canary, would take care of Mr. Siegelman (Attachments 3, 6 and 7);

6. that Ms. Simpson's affidavit may have been motivated by her relationship with a disappointed bidder who lost out on a $7.1 million state contract awarded by Governor Riley to a competitor with a lower bid – Ms. Simpson wrote letters on his behalf and he gave a companion affidavit asserting that Ms. Simpson also told him about the alleged phone call (Attachments 5 and 14);

7. That Ms. Simpson first told Mr. Scrushy's lawyers of the alleged incidents made the basis of her affidavit in February 2007, and she prepared the affidavit at their urging, meeting with Scrushy and his lawyers on several occasions during the months before she signed her affidavit on May 21, 2007 (Attachments 1, 9 and 10); yet, the reporters are not exploring her relationship with Scrushy and Siegelman and their role in the affidavit;

8. that Ms. Simpson's affidavit was never filed by Mr. Siegelman or his co-defendants in the actual court case, all allegations of selective prosecution having

been raised by Mr. Siegelman solely in the media and never in the actual court case, where an evidentiary hearing to explore the truth of the allegations could have been conducted (Attachments 1, 9 and 13); and

9. that Adam Nossiter of *The New York Times* quoted G. Robert Blakey at length in his June 27, 2007, article regarding the purported "shakiness of the federal case against" Mr. Siegelman and the prosecutors' alleged "garbage-can theory of RICO," identifying Blakey as "a law professor at the University of Notre Dame and former prosecutor" and as "the professor, whose career at the Justice Department began in 1960," and never once mentioned that Blakey was actually Mr. Siegelman's lawyer, an advocate on his behalf (Attachment 11).

The Course of the Investigation

On June 6, 2007, Louis Franklin, a 15+ year prosecutor and Acting U.S. Attorney in the Siegelman/Scrushy case, issued a statement that has been universally ignored by the national media (Attachment 6). In his statement, he confirmed that Karl Rove had no role whatsoever in bringing about the investigation or prosecution of former Governor Don Siegelman. He has never met or spoken with Mr. Rove. The decision to bring charges was made by Mr. Franklin in conjunction with the Department of Justice's Public Integrity Section and the Alabama Attorney General's Office. His decisions were based solely upon the evidence in the case that former Governor Siegelman and Mr. Scrushy committed serious federal crimes.

Mr. Franklin's decision to prosecute Don Siegelman and Richard Scrushy was based upon evidence uncovered by federal and state agents, as well as by a federal special grand jury. The investigation was actually precipitated by evidence uncovered by a Mobile investigative reporter, Eddie Curran, and a series of stories written by him (*see* Attachment 8). The investigation began shortly after an article appeared in the Mobile Press-Register alleging an improper connection between then-Governor Siegelman and financial supporter/businessman/lobbyist, Clayton "Lanny" Young, months before Leura Canary was appointed as the U.S. Attorney for the Middle District of Alabama (MDAL).

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

Ms. Canary became U.S. Attorney in September 2001. In May 2002, very early in the investigation, and before any significant decisions in the case were made, U.S. Attorney Leura Canary completely recused herself from the Siegelman matter, in response to unfounded accusations that her husband's Republican ties created a conflict of interest. Although Department of Justice officials reviewed the matter and opined that no conflict, actual or

apparent, existed, Canary voluntarily recused herself anyway to avoid even an appearance of impropriety. (*See* Attachment 7)

Thereafter, Mr. Franklin was appointed Acting U.S. Attorney in the case, upon Charles Niven's retirement in January 2003. (Attachment 6) After his appointment, Mr. Franklin made all decisions in the case on behalf of the office. Ms. Canary had no involvement in the case, directly or indirectly, and made no decisions in regards to the investigation or prosecution after her recusal. Immediately following Ms. Canary's recusal, appropriate steps were taken to ensure the integrity of the recusal, including establishing a "firewall" and moving all documents relating to the investigation to an off-site location. The off-site became the nerve center for most work done on the case, including but not limited to witness interviews and the receipt, review, and discussion of evidence gathered during the investigation.

After Ms. Canary's recusal, the investigation proceeded much like any other investigation. Federal and state agents began tracking leads first developed by investigative reporter Eddie Curran. Mr. Curran's leads eventually led to the career prosecution team in the MDAL bringing criminal charges against local architect William Curtis Kirsch, Clayton "Lanny" Young, and Nick Bailey, an aide to the former Governor. Kirsch, Young, and Bailey pled guilty to informations charging violations of federal bribery and/or tax crimes on June 24, 2003. (Attachment 6)

Armed with cooperation agreements from Bailey, Young and Kirsch, the investigation continued. In June 2004, a special grand jury was convened at the request of the prosecution team to further assist in the investigation. An indictment was returned under seal against Mr. Siegelman and ex-HealthSouth CEO Richard Scrushy on May 17, 2005. The first superseding indictment was filed and made public on October 26, 2005, charging Siegelman, Scrushy, Siegelman's former Chief of Staff Paul Hamrick, and Siegelman's Transportation Director Gary Mack Roberts. Immediately after the indictment was announced, Messrs. Scrushy and Siegelman publicly denounced the indictment and personally attacked the prosecutors. Those attacks have continued throughout the case and have now escalated to charges that Karl Rove had something to do with this investigation or prosecution. The charges are simply untrue. The indictment was solely the product of evidence uncovered through an investigation that began before Leura Canary became U.S. attorney and continued for three years after she recused herself. (Attachment 6)

During the investigation, Mr. Franklin consulted with career prosecutors (i.e., non-political appointees) in the Public Integrity Section of Main Justice to obtain guidance on the prosecution of the former Governor, but he alone maintained the decision-making authority to say yea or nay as to whether or not the U.S. Attorney's Office for the MDAL would proceed with the prosecution. Contrary to how the prosecution is portrayed in various newspaper articles and editorials, rather than the U.S. Department of Justice pushing the MDAL to move forward with the prosecution of former Governor Siegelman, the push has always come from the Middle District's U.S. Attorney's Office and has been spearheaded by Mr. Franklin as the Acting U.S. Attorney in the case. His sole motivation for pushing the prosecution was a firmly held belief,

supported by overwhelming evidence and the law, that former Governor Siegelman had broken the law and traded his public office for personal and political favors. (*See* Attachment 6) Ultimately, a jury of former Governor Siegelman's peers, consisting of men and women, African-Americans and Caucasians, agreed and convicted the former Governor of conspiracy, honest services mail fraud, accepting bribes, and obstructing justice, and Mr. Scrushy of conspiracy, honest services mail fraud, and bribery.

The Two Lead Prosecutors

Louis Franklin is a career Assistant U.S. Attorney in the Middle District of Alabama and is not a political appointee. He has served under both Democratic and Republican appointees. (Attachment 6)

One of his other lead co-prosecutors, Stephen P. (Steve) Feaga, is likewise a career Assistant U.S. Attorney in the Middle District of Alabama. He has also served under both Democratic and Republican appointees and, in fact, was hired by Ms. Canary's Democratic predecessor, Redding Pitt (*see* Attachment 3). Mr. Feaga is well-known for his participation in a number of high-profile cases, including his successful prosecution of a then sitting Republican Governor of Alabama, Guy Hunt, for illegally using campaign and inaugural funds to pay personal debts. Mr. Feaga has also issued a statement (Attachment 12) stating that "no one pressured [him], in any way, to pursue these charges" against former Governor Siegelman.[2]

Even Siegelman Disputes Simpson's Affidavit

In response to Ms. Simpson's affidavit, it is important to note that all of the alleged participants, namely, William "Bill" Canary, Terry Butts and Rob Riley, refute that any such conversation took place. (Attachment 5 and 15) According to an article by Dana Beyerle published in the Times Daily on June 24, 2007 (Attachment 5), William Canary has gone on record stating that he has never spoken to Karl Rove or the Department of Justice about prosecuting Don Siegelman. Terry Butts, one of the attorneys for Mr. Siegelman's co-defendant Richard Scrushy, likewise denies any such conversation. Rob Riley also does not recall any such conversation. As reported by Mr. Beyerle (Attachment 5), Mr. Siegelman also contradicts Ms. Simpson's affidavit as it relates to him, stating that when he dropped his 2002 re-election loss protest, it was not for the reasons recited by Ms. Simpson in her affidavit, which related to an alleged Democratic plot to hang Siegelman's opponent's campaign posters near a Ku Klux Klan rally site.

Affidavit Possibly "Sour Grapes"

---

[2] There were several other prosecutors from the MDAL U.S. Attorney's Office, the Alabama Attorney General's Office, and the Public Integrity Section of the DOJ who participated in the prosecution.

As for Ms. Simpson's motivation for submitting the affidavit now, an article entitled "Former Riley aide says Siegelman affidavits possibly 'sour grapes'" (Attachment 14) explains that Ms. Simpson's affidavit and a companion affidavit of Mark Bollinger, asserting that Ms. Simpson previously told him about the alleged conversation, outlines the relationship between Simpson and Bollinger that may have led to the affidavits. According to the article, Bollinger's company, Global Disaster Services, lost a bid to clean up millions of scrap tires stockpiled in Attalla, Alabama. The $7.1 million contract, awarded last year by the Riley administration, went to Bollinger's competitor, which submitted a lower bid. Ms. Simpson represented Bollinger's company in connection with the bid. She wrote Governor Riley a letter in August 2006 on behalf of Bollinger's company, providing additional information about the competitor before official award of the contract. Bollinger was a former aide to a Democratic Attorney General in Alabama.

In her affidavit, Ms. Simpson states that in February 2007, after she "talked to the Alabama Bar, [she] called Richard Scrushy's attorney, Art Leach, and told him why I believed Don Siegelman had conceded and Mr. Butts' role in getting Mr. Siegelman to concede." (Attachment 1) According to an article appearing in The Locust Fork Journal, Ms. Simpson actually called and wrote several letters to attorney Art Leach, who was representing Mr. Scrushy, one of Mr. Siegelman's co-defendants. (Attachment 10) The same article states, "Bollinger also knew Siegelman, so he eventually told Siegelman Ms. Simpson's story. Siegelman called and asked Ms. Simpson to write up an affidavit, but still she refused." (Attachment 10) The article goes on to assert that "Ms Simpson finally came up with the idea to drive across state lines to Georgia and sign the affidavit in a lawyer's office in Dade County." (Attachment 10) It explains that she went to Georgia "[b]ecause she was afraid federal prosecutors or even Alabama's conservative Attorney General Troy King might drag her into court and tie her up with expensive paperwork for years ... for making accusations against a federal judge in an Alabama court filing sent through the mail." (Attachment 10) Yet, the affidavit contains no mention of any accusations against a federal judge. (Attachment 1) Another article states that Ms. Simpson "was involved in a traffic accident on March 1 in which [Simpson's attorney] Duncan says Simpson was deliberately run off the road while driving back from a meeting with Richard Scrushy in Birmingham." (Attachment 10)

According to these articles, Ms. Simpson had numerous contacts with Mr. Scrushy, Mr. Scrushy's counsel, and Mr. Siegelman for several months prior to drafting her affidavit at their urging. Indeed, Ms. Simpson claims to have provided legal advice and services to Scrushy. One article states that she basically wrote, behind the scenes, but did not sign a motion filed by Scrushy seeking to have the federal judge recused. (Attachment 10) Yet, articles identify her as a "Republican" lawyer, and her relationship with Mr. Scrushy and Mr. Siegelman has not been examined by any of the investigative reporters.

Conclusion

It is greatly disturbing that the foregoing facts do not appear in national newspaper articles and editorials seizing on Ms. Simpson's affidavit as cause for Congressional inquiry. As

explained by Assistant U.S. Attorney Feaga in his statement (Attachment 12), "The case of *United States v. Siegelman* was pursued and successfully prosecuted because my co-counsel and I, a grand jury, a trial jury, and a federal judge, after hearing the facts, believed that those facts established that Siegelman unlawfully sold out the best interests of the people of the State of Alabama. Any assertion to the contrary ... is just plain wrong."

Calling for a congressional inquiry is one thing, but basing the request on an incomplete and inaccurate telling of one side of the story is an abuse of power. The lack of journalistic integrity on the part of national news outlets in reporting this story could subvert justice and undermine valid convictions.

You may contact Louis V. Franklin, Sr., Acting U.S. Attorney in the Siegelman/Scrushy prosecution at 334-223-7280 for further comment.

APPENDIX E

Department of Justice

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

FOR IMMEDIATE RELEASE

www.usdoj.gov/usao/alm

CONTACT: Retta Goss
Telephone (334) 223-7280
Fax (334) 223-7560
Cell (334) 546-1930

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

○