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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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September 25, 2009

The Honorable Eric H. Holder  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Attorney General:

We write urging you to take all necessary steps to ensure that a comprehensive, fair, and impartial review is given to the extensive allegations of prosecutorial misconduct and politically-influenced prosecution that have been raised in connection with the prosecution of former governor of Alabama, Don Siegelman.

This case has been one of grave national controversy for more than two years. Several of us first wrote your predecessor Alberto Gonzales regarding the Siegelman matter on July 17, 2007,<sup>1</sup> after a bipartisan coalition of 44 former state Attorneys General raised concerns about the case to Chairman Conyers. (The number of concerned former AGs has since grown to 91.)<sup>2</sup> These law enforcement officials wrote that "there is reason to believe that the case against Governor Siegelman may have had sufficient irregularities as to call into question the basic fairness that is the linchpin of our criminal justice system."<sup>3</sup>

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<sup>1</sup>July 17, 2007, Letter to the Honorable Alberto Gonzales from Chairman Conyers and Reps. Sánchez, Baldwin, and Davis.

<sup>2</sup>In April 2009, a bipartisan group of 75 former State Attorneys General wrote you urging a full investigation of the handling of the Siegelman prosecution. See April 13, 2009, letter from former State Attorneys General to the Honorable Eric Holder. In September, a bipartisan group of 91 former state Attorneys General filed a brief on legal issues in the Siegelman case. See Brief Amici Curiae of Former Attorneys General in Support of Petition, *Siegelman v. United States*, United States Supreme Court No. 09-182 (filed Sept. 10, 2009).

<sup>3</sup>July 13, 2007, letter from former state Attorneys General to the House and Senate Judiciary Committees.

Two Judiciary Subcommittees held a joint hearing in October 2007 on issues raised in this and other cases.<sup>4</sup> At this hearing, former Attorney General Richard Thornburgh lamented what he saw as the deterioration of the Department's reputation for fair and impartial justice, warning that "citizens must have confidence that the Department of Justice is conducting itself in a fair and impartial manner without actual political influence or the appearance of political influence. Unfortunately, that may no longer be the case."<sup>5</sup> Former United States Attorney Douglas Jones also appeared at that hearing and testified that the Department's credibility was at risk: "[A]cross the country, people who have worked in the Department of Justice are concerned, and they see a disturbing trend and a trend that involves partisan politics that should never be the case."<sup>6</sup> Mr. Jones also specifically addressed the Siegelman case, and described negotiations with the prosecutors that he believed were not undertaken in good faith and other apparent improprieties.<sup>7</sup> After Mr. Jones testified, the lead prosecutors in the Siegelman case took the unusual step of publicly accused him of making false statements to the Committee.<sup>8</sup>

On April 17, 2008, Chairman Conyers released a detailed staff report on alleged instances of selective prosecution, including the Siegelman case. With respect to that case, the report described allegations of possible political interference with prosecutorial decisionmaking, as well as potential misconduct in the conduct of the prosecution itself.<sup>9</sup> The report included allegations of prosecutorial misconduct described by attorney Art Leach, a former Assistant United States Attorney and counsel for Governor Siegelman's co-defendant Richard Scrushy, including charges that "the Government was lying to" Mr. Leach.<sup>10</sup> In conjunction with the release of that

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<sup>4</sup>Oct. 23, 2007, Joint Hearing Before the Subcomms. on Crime, Terrorism and Homeland Security and on Commercial and Admin. Law, *Allegations of Selective Prosecution: The Erosion of Confidence in our Federal Criminal Justice System*.

<sup>5</sup>*Id.* at 209.

<sup>6</sup>*Id.* at 273.

<sup>7</sup>*Id.* at 274-88.

<sup>8</sup>Acting US Attorney Louis Franklin told the media that Mr. Jones' testimony regarding the role of Main Justice in pressing the case forward was "absolutely not true." Orndorff and Blackledge, *Prosecutor Says Montgomery Led the Siegelman Case*, Birmingham News, Oct. 29, 2007. Assistant US Attorney and trial lead Steve Feaga told the press that he "never told Jones that Washington ordered a review of the entire investigation," as Mr. Jones had testified. Orndorff, Davis says Siegelman Prosecution is Unjust, Birmingham News, Oct. 24, 2007.

<sup>9</sup>Staff Report, *Allegations of Selective Prosecution in our Federal Criminal Justice System*, April 17, 2008.

<sup>10</sup>April 14, 2008, Letter from Art Leach to Chairman Conyers.

report, several of us called on the Office of Professional Responsibility (OPR) to investigate the issues of selective prosecution and prosecutorial misconduct detailed in that report concerning the Siegelman case and others.<sup>11</sup> On May 5, 2008, Chairman Conyers was informed that OPR had opened just such an investigation.<sup>12</sup>

The Committee's investigation into aspects of this matter has continued and, as you know, we have referred additional information to OPR as information has been brought to our attention. Most significantly, on November 7, 2008, Chairman Conyers and Ms. Sánchez wrote your predecessor Michael Mukasey, to inform him of serious allegations of prosecutorial misconduct that a Department whistleblower had raised, involving seemingly improper contacts between members of the jury and the prosecution team, as well as alleged violations of her recusal from the case by the United States Attorney for the Middle District of Alabama.<sup>13</sup>

In recent months, additional troubling allegations have surfaced. While the OPR investigation of the Siegelman matter has been pending for more than sixteen months, Committee staff has received claims that plainly important witnesses have not been contacted by investigators. Other reports state that, when witnesses have been contacted, investigators have focused on inapt or unduly narrow lines of inquiry. Additional concern has been raised about the whistleblower who provided information to the Committee about possible jury and prosecutorial misconduct. In response to Mr. Conyers' and Ms. Sánchez' letter of November 7, the Department stated in a court filing that it would re-open its investigation of these substantive concerns.<sup>14</sup> However, while the Department has since terminated the whistleblower's employment, we have not received any further information about the Department's investigation of her substantive charges.

While we are not in a position to assess the validity of these reports, we transmit them for your consideration. More broadly, we urge you to ensure that the OPR investigation into this matter is done in a thorough, comprehensive, and professional manner, and that it be conducted with sufficient transparency, expedition, and impartiality to be seen as credible by the many outside observers who have so closely followed this case. We hope that you will look carefully

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<sup>11</sup>April 17, 2008, Letter to OPR Director Marshall Jarrett and Inspector General Glenn Fine from Chairman Conyers and Reps. Scott, Sánchez, and Baldwin.

<sup>12</sup>May 5, 2008, Letter to Chairman Conyers from OPR Director Marshall Jarrett.

<sup>13</sup>Nov. 7, 2008, Letter to Honorable Michael Mukasey from Chairman Conyers.

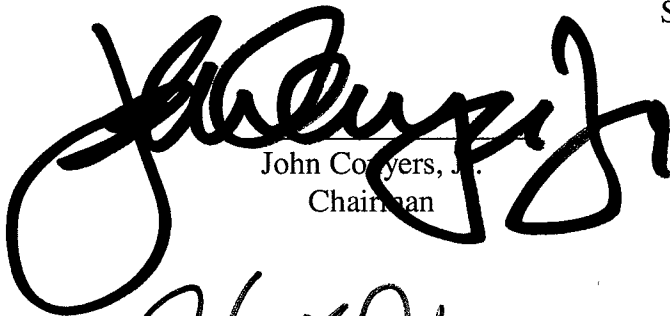
<sup>14</sup>Response to Defendant-Appellant Siegelman's Notice of Supplemental Information Relevant to Issues on Appeal at 10 n.4, filed in *United States v. Siegelman*, Appeal No. 07-13163-B, United States Court of Appeals for the Eleventh Circuit, Nov. 26, 2008.

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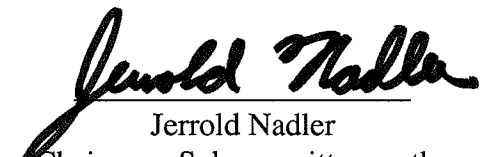
at the scope of the investigation, and the resources being dedicated to it, to ensure that the complex issues before OPR are given full consideration. And we particularly urge you to ensure that fresh eyes, with no connection to the underlying case and no investment in any particular outcome, lead and conduct this crucial review.

Mr. Attorney General, we applaud the extraordinary efforts you have made during your short tenure in office to rebuild the Department's reputation for fair and impartial justice. But that work is not yet complete. We hope that the information provided in this letter assists you in this important task.

Sincerely,




John Conyers, Jr.  
Chairman



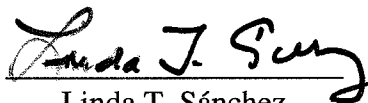
Chairman, Subcommittee on the  
Constitution, Civil Rights, and Civil  
Liberties



Henry C. "Hank" Johnson  
Chairman, Subcommittee on Courts and  
Competition Policy



Member of Congress



Linda T. Sánchez  
Member of Congress

cc: Mary Patrice Brown  
Ron Weich  
The Honorable Lamar Smith  
The Honorable Howard Coble  
The Honorable F. James Sensenbrenner