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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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<http://www.house.gov/judiciary>

July 17, 2007

The Honorable Alberto R. Gonzales  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

Dear Mr. Attorney General:

As you are well aware, the bedrock principle of our federal criminal system is that justice must be served objectively, on a non-partisan basis, and without fear or favor. Our investigation into the U.S. Attorneys scandal, however, has raised serious concerns about efforts to undermine this basic principle. Because of these concerns, and in order to further our investigation, we ask that you provide us with certain critical documents and information relating to U.S. Attorney's offices that may have initiated prosecutions against public officials and others based on their political affiliation.

Evidence suggests that at least some of the nine terminated U.S. Attorneys were forced out due, in part, to their reluctance to pursue charges against Democratic officials, or their willingness to move forward in investigating or prosecuting Republican officials. On the other hand, while a number of other U.S. Attorneys were considered for termination, most were retained and described as "loyal Bushies." During the course of our investigation, moreover, serious allegations have been made that some U.S. Attorneys who were not terminated, engaged in selective and improper targeting of Democrats for prosecution.

Concerns regarding politically based, select prosecutions have been raised by a recent academic study by Messrs. Shields and Cragan that found federal prosecutors during the Bush Administration have indicted Democratic officeholders far more frequently than their Republican counterparts.<sup>1</sup> The study identified 375 investigations and/or indictments of candidates and

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<sup>1</sup> DONALD C. SHIELDS & JOHN F. CRAGAN, THE POLITICAL PROFILING OF ELECTED DEMOCRATIC OFFICIALS: WHEN RHETORICAL VISION PARTICIPATION RUNS AMOK (2007), available at [http://www.epluribusmedia.org/columns/2007/20070212\\_political\\_profiling.html](http://www.epluribusmedia.org/columns/2007/20070212_political_profiling.html)

elected officials brought by U.S. attorneys since 2001.<sup>2</sup> The study's authors found that of the 375 cases they identified, 10 involved independents, 67 involved Republicans, and 298 involved Democrats.<sup>3</sup> The authors noted that the greatest partisan disparity in investigations and/or indictments involved local politicians, where Democrats were seven times as likely as Republicans to be subject to criminal charges from the Department of Justice.<sup>4</sup>

Allegations that even one of the nation's 93 U.S. Attorneys is improperly prosecuting or failing to prosecute Democratic officials based on their political affiliation have the potential to taint and undermine the legitimacy of our entire criminal justice system. In fact, the perception that U.S. Attorney's offices are improperly exercising their prosecutorial powers in a partisan manner is already leading to an increase of motions in court by defense counsel. The Los Angeles Times recently reported that several defense attorneys are citing the allegations of selective prosecution as evidence that federal prosecutors are bringing criminal charges based upon improper political motives.<sup>5</sup> These defense attorneys allege that prosecutors consider a target's political affiliations when deciding whether or not to issue indictments.<sup>6</sup>

In order to assure the public that everyone, no matter their political affiliation, is treated equally under the law, we are initially requesting documents relating to the Department's handling of three cases, and in particular any memoranda, analysis, or other communications discussing whether and to what extent criminal charges should be and were pursued against the individuals listed below. Additionally, with regard to these prosecutions, we are requesting any memoranda, analysis, or other communication from any White House staff, members of congress or their staff, and any state or local political party officials or their staff.

- The 2006 conviction of Alabama's former Democratic Governor Don Siegelman for bribery, conspiracy, and mail fraud has raised serious concerns. Mr. Siegelman was indicted in 2004, two years after losing the governor's race by a mere 3,200 votes in the closest governor's election in Alabama state history. In May, 2007, Jill Simpson, a

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Richard B. Schmitt, *Attorney firings echo in courts*, L.A. TIMES, June 18, 2007, at A1.

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

Republican attorney in Alabama who had worked for Mr. Siegelman's 2002 Republican opponent, swore in an affidavit that in 2002, a former protégé of Karl Rove told a small group of Republican political operatives that Karl Rove and two U.S. Attorneys in Alabama were working to "take care of" Mr. Siegelman.<sup>7</sup> The Rove protégé, Bill Canary, is married to Leura Canary, who President Bush appointed in 2001 to be the U.S. Attorney in the Middle District of Alabama. In 2005, the U.S. Attorney's Office in the Middle District of Alabama indicted Mr. Siegelman (Ms. Canary recused herself from participating in the Siegelman case in 2002). In her affidavit, Ms. Simpson said that Bill Canary told her and two colleagues that "Karl [Rove] had spoken with the Department of Justice and the Department was already pursuing Don Siegelman."<sup>8</sup> The phone call that Ms. Simpson was referring to occurred in November, 2002, when Mr. Siegelman was seeking a recount of the vote he had just lost, and when Republican operatives were concerned that Mr. Siegelman could be a significant political threat in future elections.<sup>9</sup>

There have been several reported irregularities in the case against Mr. Siegelman that raise questions about his prosecution. In 2004, charges against Mr. Siegelman were dropped by the U.S. Attorney's Office in the Northern District of Alabama before the case went to trial, and the judge harshly rebuked prosecutors bringing that case.<sup>10</sup> In the RICO case filed in the Middle District of Alabama in 2005, there have been allegations of jury tampering involving two of the jurors who convicted Mr. Siegelman.<sup>11</sup> These and other irregularities prompted 44 former state attorneys general to sign a petition "urging

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<sup>7</sup> Jill Simpson, Affidavit at 3. The participants in the conversation described in the Simpson affidavit have challenged Simpson's allegations in their responses to news organizations. U.S. Attorney Leura Canary has maintained that due to her recusal, she had no role in the charging decision around Siegelman. She has also insisted that the initial investigation was not prompted by her political ties. Without access to the requested documents, the Judiciary Committee is not in a position to evaluate their competing factual claims or to judge the veracity of any of these parties.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Adam Zagorin, *Rove Named in Alabama Controversy*, TIME, June 1, 2007.

<sup>11</sup> Patricia C. McCarter, *Sentencing Siegelman*, HUNTSVILLE TIMES, June 25, 2007.

the United States Congress to investigate the circumstances surrounding the investigation, prosecution, sentencing and detention” of Mr. Siegelman.<sup>12</sup>

- On April 5, 2007, the Seventh Circuit Court of Appeals, citing “evidence [that] is beyond thin,” threw out the federal conviction of Georgia Thompson, a Wisconsin state procurement officer.<sup>13</sup> The office of the U.S. Attorney in Wisconsin, Steven Biskupic, had won a jury conviction of Ms. Thompson, claiming the career civil servant impermissibly awarded a contract to a travel agency whose director was a political contributor to Democratic Governor Jim Doyle. The U.S. Attorney proceeded with the prosecution even though the travel agency that won the contract submitted the lowest bid, and tied for first place on the complicated merit score that ranked all contract bidders. Additionally, there was no evidence that Ms. Thompson was aware of or interested in the political contributions by the head of the travel agency.<sup>14</sup>

Steven Biskupic’s name appeared on a March, 2005, list that was compiled by Department of Justice staff which named U.S. Attorneys who could potentially be ousted. In January, 2006, Mr. Biskupic indicted Ms. Thompson; that same month, Mr. Biskupic’s name had been removed from the DOJ list of U.S. Attorneys who might be replaced. After Ms. Thompson’s conviction in June, 2006, the campaign of Gov. Doyle’s Republican opponent, U.S. Representative Mark Green, seized on the conviction as a means to paint Gov. Doyle as corrupt.<sup>15</sup> The Court of Appeals, finding that no crime had been committed, acquitted Ms. Thompson, declaring her “innocent,” but of course, the political damage had been done and could not be rectified.

On April 10, 2007, Senate Judiciary Committee Chairman Patrick Leahy and several other senators requested documents regarding the Georgia Thompson case, including documents regarding contacts between White House personnel, Main Justice, or outside parties and the United States Attorney’s office handling the prosecution. Our Committee

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<sup>12</sup> Letter from 44 former state attorneys general, to John Conyers, Jr., Chairman, Committee on the Judiciary, and Patrick Leahy, Chairman, Senate Judiciary Committee (July 13, 2007) (on file with the Committee on the Judiciary).

<sup>13</sup> U.S. v. Thompson, 484 F.3d 877 (7th Cir. 2007).

<sup>14</sup> *Id.* at 878.

<sup>15</sup> Bill Lueders, *Biskupic tried to ‘squeeze’ Georgia Thompson: U.S. Attorney’s office made offers of leniency, tied to her testifying against others*, ISTHMUS, May 17, 2007, available at <http://www.thedailyage.com/isthmus/article.php?article=7081>.

joined that request the following day.<sup>16</sup> On May 17, 2007, Principal Deputy Assistant Attorney General Richard Hertling responded by producing some documents relevant to other requests made in that letter, but did not produce any documents regarding the Thompson case.<sup>17</sup> Mr. Hertling explained that “processing [the Thompson] documents would require an extensive commitment of resources and time.”<sup>18</sup> Mr. Hertling’s letter further noted that the Department was in the process of searching for evidence of communications between Main Justice and the local U.S. Attorney’s office, and that he expected “that there were [such] communications during the investigation and prosecution of the case.”<sup>19</sup> Finally, Mr. Hertling’s letter explained that the search for relevant communications regarding the Thompson case continued in “the Criminal Division, the Office of the Attorney General, and the Office of the Deputy Attorney General.”<sup>20</sup> The two months that have passed since Mr. Hertling’s letter have not assuaged our concerns regarding the Thompson prosecution, and we are renewing our request that the documents related to that matter be promptly produced as well as the other documents requested in this letter.

- The prosecution of Dr. Cyril Wecht in the Western District of Pennsylvania by U.S. Attorney Mary Beth Buchanan has also engendered controversy. It has been alleged that the case of Dr. Wecht, a prominent 75-year old Democrat who was the coroner in Allegheny County, is indicative of other prosecutions in the Western District - since 2001, the U.S. Attorney has never indicted a Republican official, and has only prosecuted officeholders who are Democrats.<sup>21</sup> Dr. Wecht, a world renowned forensic pathologist and television commentator, was charged with misusing his office and personally enriching himself by, among other things, striking a deal with a local university to trade

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<sup>16</sup> Letter from Patrick Leahy, Chairman, Senate Judiciary Committee, et. al., to Alberto Gonzales, Attorney General, U.S. Department of Justice (April 10, 2007) (on file with the Committee on the Judiciary).

<sup>17</sup> Letter from Richard Hertling, Principle Deputy Attorney General, U.S. Department of Justice, to Patrick Leahy, Chairman, Senate Judiciary Committee (April 10, 2007) (on file with the Committee on the Judiciary).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Mary Beth Buchanan, Interview with House Committee on the Judiciary, at 145-6.

unclaimed cadavers for university lab space.<sup>22</sup> Claiming Dr. Wecht was a flight risk, Ms. Buchanan advised his defense lawyers, including former Attorney General Richard

Thornburgh, that her 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 voluntarily appear in court to be arraigned.<sup>23</sup> Reportedly only after former Attorney General Thornburgh spoke with Deputy Attorney General Paul McNulty did Ms. Buchanan agree not to arrest Dr. Wecht and subject him to a “perp walk.” In court filings, Dr. Wecht alleges that Ms. Buchanan’s office inflamed the press by making inappropriate statements.<sup>24</sup> The U.S. Attorney’s office urged the courts to set the trial in October, 2006, a month before the congressional elections; the case was postponed only after the federal appeals court agreed to hear motions by Dr. Wecht’s attorneys. Yet U.S. Attorney Buchanan has not brought charges against at least two Republican officials who, like Dr. Wecht, are alleged to have misused their office staff.<sup>25</sup>

While the above cases are by no means an exhaustive list of all alleged instances of politically-motivated prosecutions or lack of prosecutions, we believe that learning the truth about these three prosecutions is an important step in the process of restoring the Department of Justice’s credibility and reputation for impartial justice.

We appreciate your attention to this matter and ask that you provide these documents to us by Tuesday, July 27, 2007 at 10:00 a.m. Please direct your responses and questions to the staff at the House Judiciary Committee office, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680).

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<sup>22</sup> Paula Reed, *Motive of Wecht deal talks questioned*, PITT. POST-GAZETTE, June 7, 2007.

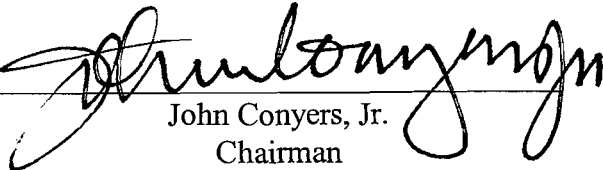
<sup>23</sup> *Id.*

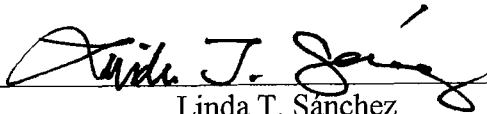
<sup>24</sup> U.S. v. Wecht, 484 F.3d 194, 198 (3d Cir. 2007).

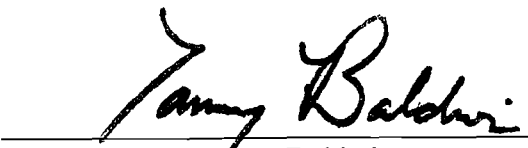
<sup>25</sup> Thomas J. Farrell, Op-ed, *Our U.S. Attorney should resign*, PITT. POST-GAZETTE, Mar. 20, 2007.

The Honorable Alberto R. Gonzales  
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July 17, 2007

Sincerely,

  
John Conyers, Jr.  
Chairman

  
Linda T. Sanchez  
Chairwoman, Subcommittee on Commercial  
and Administrative Law

  
Tammy Baldwin  
Member, Committee on the Judiciary

  
Artur Davis  
Member, Committee on the Judiciary

cc: The Honorable Lamar S. Smith  
The Honorable Chris Cannon