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