

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.

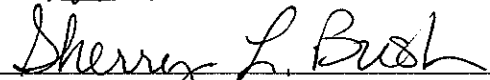
The matters contained herein are true and correct based upon my personal knowledge.



MATTHEW H. LEMBKE

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

(SEAL)



Notary Public

My Commission Expires: July 30, 2009