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Chairman John Conyers
House Judiciary Committee
2138 Rayburn House Office Building
Washington, D.C. 20515

Delivered Via U.S. Mail and E-Mail to: Sam.Sokol@mail.house.gov

Re: United States v. Siegelman and Scrushy

Dear Chairman Conyers:

This letter relates to events beginning in 2004 regarding to the prosecution of Governor Siegelman and Richard Scrushy in Montgomery, Alabama. I represented Richard Scrushy during that prosecution and I continue to represent him to this day.

I represented Richard Scrushy from the very outset of the events that lead to the indictment and prosecution in Montgomery. I was not directly involved in the conversations and meetings in 2004 with the Montgomery United States Attorneys Office. However, I have notes which I have reviewed and I remember Abbe Lowell telling me that he had participated in a series of meetings with the Public Integrity Section at DOJ and that he had been informed that the case in Montgomery was not going forward. We had no further word of this case until mid to late 2005. For a variety of reasons it was my opinion that the matter was closed.

When the case came back to life around the time of Mr. Scrushy's acquittal in Birmingham (June 2005), I inquired with Assistant United States Attorney (AUSA) Louis Franklin why it had come back to life and he refused to give me any information in this regard. In fact, by the time I spoke with Franklin the case had already been indicted, was under seal and therefore was not publicly available. Contrary to this fact, I was lead to believe that the matter was just under investigation. The original indictment was subsequently superseded with a new indictment which was later unsealed. It was when this indictment (the superseding) was unsealed that I learned that Richard Scrushy had been under indictment for some time, to include throughout my preceding conversations with the government. During the course of phone conversations and one in person meeting with Franklin prior to the unsealing of the second indictment (the meeting was attended by many of the lawyers on the prosecution team, except Mr. Feaga) I repeatedly asked if the government had made a charging decision and I was always informed that they had not. In fact, as referenced above, the case was already under indictment and under seal at the time of my conversations with the government. If I had known that my

client had already been charged with a crime, I would have completely reevaluated having any communication with the government. The government sought information from Mr. Scrushy which I provided under the belief that providing the information would possibly avoid indictment. In fact, the government was lying to me, my client had already been indicted and they were ferreting out my defense in the case. We moved to dismiss the case based upon these lies and that motion was denied.

I want to say, as an employee of the United States Department of Justice for 19 years, that I am shocked and repulsed by the lies that were told to me. This action on the part of all of those involved is a stain upon the Department of Justice.

As to the information the government wanted from Richard Scrushy, AUSA Steve Feaga was always very direct as to what he wanted Mr. Scrushy to say. He wanted Richard to say that there was a quid pro quo, that is, an agreement between Richard Scrushy and Governor Siegelman to the effect that Richard would make a campaign contribution and the Governor would appoint Richard to the CON board. We repeatedly told Feaga and Franklin that there was no quid pro quo. The conversations with Feaga always ran a familiar course. We would discuss the facts as we understood them from our client and Feaga would say, "this is what I must have" and he would outline a quid pro quo which we repeatedly informed him our client could not provide because neither the campaign contribution nor the appointment to the CON board happened that way.

The discussions with AUSA Feaga (often with Franklin present) occurred long after we learned about the indictment, as we approached the trial, and were for the purpose of trying to resolve the case for Mr. Scrushy. As time passed Feaga and Franklin were amenable to getting Richard out of the case with some nominal plea in state court. The precise nature of the agreement was never finalized due to the need for DOJ approval for the overall plan to dismiss. I was told by the prosecutors in Montgomery that any agreement was dependant upon approval from the Department of Justice in Washington. It was during this time period that AUSA Feaga told me that in his opinion Richard Scrushy was a "victim" in this case. In political corruption cases prior to the passage of Title 18, United States Code, § 666, the vernacular and legal concept was that the politician extorted funds from "victims."

As part of this plan to possibly dispose of the case I was given the name of the Acting Chief of Public Integrity, Andrew Lourie. I spoke with Mr. Lourie on April 4, 2006 in order to set up a meeting at his office in Washington. During this discussion Mr. Lourie told me that he did not want to take me down a wrong path and that his position was fixed on a plea to misprison of a felony. I asked him whether that meant that he would not consider a misdemeanor and he told me that he would discuss it but he did not think he would approve it. He told me he would not agree to dismiss the case. Lourie said based upon the proffer that misprison of a felony was the best fit in terms of a plea and that Richard would just have to add a new portion to his proffer, that is, Richard would have to change his statement to the government. Lourie suggested that Richard admit that he knew that the Governor was committing a crime by demanding (that is extorting) a contribution, that Richard should have rejected the Governor's demands, but because

he did not, Richard would admit that he committed a crime. Mr. Scrushy rejected any such plea as completely inconsistent with the facts. I went forward with the meeting in Washington hoping that along with my efforts, the prosecutors in the Montgomery office would persuade Lourie that getting Richard out of the case was best for Mr. Scrushy and the government.

The meeting with Andrew Lourie took place in Washington D.C. on April 6, 2006. We met him in the Public Integrity office and the meeting went as one would expect. Under normal circumstances when the prosecutors in the field desire a particular resolution Washington approves and the agreement moves forward. We discussed the fact that the prosecutors in Montgomery had informed me that they supported getting Scrushy out of the case. By the conclusion of the meeting it appeared to me that some arrangement would be approved. As we departed Mr. Lourie told me that he would have a decision within a week.

On Friday April 14, 2006 I received a phone call from AUSA Franklin informing me that no decision would be made until the next week. He also told me that he was embarrassed to make the call. Later that afternoon, I received a phone message from Andrew Lourie in which he informed me that the offer for Mr. Scrushy was felony misprison. I returned the call but I could not get Mr. Lourie on the phone and I left a message asking that he call me.

As time passed and the trial approached I made several attempts to get Mr. Lourie on the phone and could not get Mr. Lourie to take my call or return my call. I eventually got him on the phone and he seemed unprepared for the conversation. He said Mr. Scrushy would have to plead to misprison of a felony in order to resolve the case. I asked him what happened and why Washington would not approve a resolution which had been supported by the field (the Montgomery U.S. Attorney office). Lourie informed me that the decision was made over his head. I immediately asked if that meant that it was the Assistant Attorney General (AAG Alice Fisher) for the Criminal Division. He responded to me that it was not the AAG and that the decision had been made higher than the AAG for the Criminal Division. I was completely puzzled by this response and I asked him if he meant that it was made in the Deputy Attorney General's office because I could not imagine a decision like this rising to that level of the Department of Justice. (AAG Fisher and everyone above her were political appointees.) He told me that he could not discuss the decision making process any further and that he really should not have shared what he did with me and that he would be in trouble if it were known that he had shared the little information he provided to me.

My client would not agree to plead guilty to misprison of a felony because he did not agree – and would not say – that he had done anything illegal in his dealings with Governor Siegelman.

Sincerely,

s/*Arthur W. Leach*
Arthur W. Leach
*Attorney for Richard M. Scrushy*