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Re: United States v. Don Eugene Siegelman and Richard M. Scrushy,
C.A. No. 07-13163 (11th Cir.); D. Ct. No. 2:05-CR-119-MEF (MDAL)

Dear Sirs and Madam:

You will recall that on October 31, 2006, Chief Judge Fuller held an evidentiary hearing on defendants' Joint Motion for New Trial pursuant to Rule 33(a) of the Federal Rules of Criminal Procedure filed on September 29, 2006. The purpose of the hearing was to determine how defendants obtained affidavits dated August 9, 2006, and September 1, 2006, from one of the trial jurors. On November 17, 2006, Chief Judge Fuller held another evidentiary hearing regarding allegations raised in the new trial motion arising out of copies of purported emails allegedly exchanged between jurors during the trial, which defendants alleged that their attorneys (and defendant Scrushy) had received from an anonymous source via the United States mail on three different occasions, in envelopes post-marked September 5, 15, & 21, 2006, respectively. The purported emails suggested that one or more jurors was improperly exposed to extraneous

information and outside influence during the trial, including the jury deliberations. At the second evidentiary hearing, Chief Judge Fuller elicited testimony from all twelve jurors concerning issues of juror impropriety and extraneous influence. On December 13, 2006, Chief Judge Fuller entered a 57-page memorandum opinion and order denying defendants' Joint Motion for New Trial.

On December 28, 2006, Defendant Scrusby filed a Motion to Reconsider Order Denying Motion for New Trial, attached to which were two more purported emails between jurors that defendant Scrusby alleged were also received by his counsel from an anonymous source via the United States mail. In particular, defendant Scrusby contended the newest emails were anonymously mailed to him and his attorneys and received on December 21 and 22, 2006, eight and nine days, respectively, after Chief Judge Fuller had denied defendants' motion for new trial. Defendant Siegelman ultimately joined in this Motion to Reconsider. The government opposed defendants' motions on January 19, 2007, and on June 22, 2007, Chief Judge Fuller denied those motions.

Against this background, I provide to you the following information which has recently come to the attention of my section while preparing the government's responsive brief in the appeal of defendants' convictions.

On or about December 21, 2006, at least five co-workers of Jurors 7 and 40 received in the United States mail at their places of employment copies of purported emails identical to the ones appended to defendant Scrusby's Motion to Reconsider filed on December 28, 2006. Like the envelopes received by defense counsel, the envelopes did not bear a return address, were postmarked December 20, 2006, and were sent from Montgomery, Alabama. After the recipients showed the purported emails and envelopes to Jurors 7 and 40, the jurors notified the United States Marshals Service. (Juror 7 initially reported the mailings to the court, but the court referred him to the Marshals Service.) The Marshals Service brought the mailings to the attention of Acting United States Attorney Louis Franklin, who asked the Postal Inspectors to attempt to determine who had sent the letters to the jurors' co-workers. Shortly thereafter, Mr. Franklin transferred oversight of the investigation to an attorney in his office who was not involved in the prosecution of defendants.

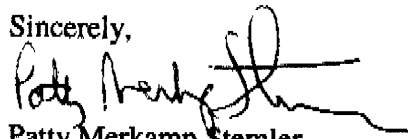
Over the next several weeks, a Postal Inspector interviewed Jurors 7 and 40 and some of the co-workers who had received in the United States mail copies of the purported emails. The Postal Inspector also compared the purported emails to test emails sent from and received by Juror 40's email account. Based on a comparison of the emails and information obtained from the jurors and their co-workers, including information from a co-worker of Juror 7 who monitored Juror 7's emails during trial and did not see any incoming emails from Juror 40, the Postal Inspector concluded that the purported emails were not authentic and had been forged. Although the Postal Inspector subsequently submitted the stamped envelopes and purported emails for forensic examination, the results were inconclusive. He closed his investigation on September 10, 2007. No charges were brought.

While the investigation was ongoing, in early April 2007, well after the second evidentiary hearing on November 17, 2006, representatives of the United States Marshals Service apprised Chief

Judge Fuller that the Postal Inspectors were investigating the receipt of purported emails by co-workers of the two jurors and had concluded that the purported emails were not authentic, but that the Postal Inspectors had not yet determined who had sent copies of the emails to the co-workers. The Marshals who spoke to Chief Judge Fuller have advised us that the Chief Judge did not solicit this report. I am not aware of any other contact on the subject between the Chief Judge and the Marshals, and I am not aware of any contact on the matter between the Chief Judge and any federal prosecutor.

We came across the foregoing information in the course of preparing the government's answering brief in this appeal, and we have provided it to you out of an abundance of caution. The information does not alter the government's conclusion that the purported e-mails appended to defendant Scrushy's Motion to Reconsider provided no basis for the district court to reconsider its December 12, 2006 order denying the defense motion for a new trial, or to grant a new trial based on newly discovered evidence. While we are not seeking to supplement the record on appeal with this information under Fed. R. App. P. 10(e), we are sending a copy of this letter to Chief Judge Fuller and the Court of Appeals for notice purposes.

Sincerely,



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cc: The Honorable Thomas K. Kahn, Clerk
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