

EASTLAND LAW OFFICES, PLLC
ATTORNEYS AT LAW

HIRAM C. EASTLAND, JR.
HIRAM C. EASTLAND, III
JACOB K. EASTLAND
VICKI BOBO EASTLAND

307 COTTON STREET
GREENWOOD, MS 38930
TELEPHONE: (662) 453-1227
FACSIMILE: (662) 453-2808

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Honorable Eric Holder
Attorney General
United States Department of Justice
950 Pennsylvania Ave. N.W.
Washington, D.C. 20530-0001

Dear Attorney General Holder:

I am writing this letter to request that you implement an immediate full review of Paul Minor's case and whether the Department of Justice complied with Mr. Minor's *Brady* requests for government disclosure of all exculpatory or impeaching material in the United States' possession, custody or control, the existence of which was known or by exercise of due diligence could have become known to the government before the 2005 and 2007 trials of Paul Minor. See *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Agurs*, 427 U.S. 97 (1976); *Giglio v. United States*, 405 U.S. 150 (1972); see also, Exhibits 1 and 2 attached *Brady* progeny requests for Paul Minor's 2005 and 2007 trials.

As you are aware, the government prosecution not only has an obligation, but an absolute duty under *Brady* to disclose all exculpatory or favorable information prior to trial. Furthermore, the Supreme Court has held that the *Brady* duty of the government to disclose all evidence favorable to the defendants or discrediting to its own case is fundamental to the Constitution's due process requirement. *Agurs*, 427 U.S. 97; *United States v. Beasley*, 576 F.2d 626, 630 (5th Cir. 1978), cert. denied, 440 U.S. 947 (1979) (*Brady* rule is not merely a discovery rule, but a rule of fairness and a minimum constitutional standard under the Due Process clause with respect to pretrial discovery); *Kyles v. Whitley*, 115 S.Ct. 1555 (1995) (obligation belongs to the individual prosecutor to learn of favorable evidence to the accused); see also, *Mooney v. Holohan*, 294 U.S. 103 (1935); *Pyle v. Kansas*, 317 U.S. 213 (1942). This requirement also encompasses information which bears upon the credibility of its witnesses as well as matters more directly material to guilt or innocence. *Giglio*, 405 U.S. 150; *Napue v. Illinois*, 360 U.S. 264 (1959); *United States v. Joseph*, 533 F.2d 282 (5th Cir. 1976); *United States v. Dillard*, 419 F.Supp. 1000 (N.D.Ill. 1976); see generally, *Williams v. Dutton*, 400F.2d 797 (5th Cir. 1968), cert. denied, 393 U.S. 1105 (1969).

In thoughtfully considering this request for a full review of Mr. Minor's prosecution and whether the government complied with its pre-trial *Brady* duty, it bears remembering that the functions of the *Brady* duty as well as the government prosecutor are both grounded in fairly adhering to the rights of the accused in order to protect the innocent and to assure the

prosecutor's methods do not produce a wrongful conviction. Justice William O. Douglas long ago recognized:

The function of the prosecutor under the federal constitution is not to tack as many skins of victims as possible to the wall. His function is to vindicate the right of the people as expressed in the laws and give those accused a fair trial.¹

Similarly, the Supreme Court long ago recognized the function of the United States Attorney as follows:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose *obligation to govern impartially* is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense *a servant of the law*, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his *duty to refrain from improper methods calculated to produce a wrongful conviction* as it is to use every legitimate means to bring about a just one.²

There are many compelling reasons for you to implement an immediate full review of Mr. Minor's prosecution and whether the Bush Justice Department complied with its duty to fairly disclose all exculpatory or favorable information to Mr. Minor. Indeed, under the circumstances of this case, it is most unlikely that Mr. Minor was fairly and justly prosecuted under the law and most unlikely that Mr. Minor's *Brady* requests for information beneficial to his defense were taken seriously and complied with:

- As you are aware, William Welch, the Chief of the Public Integrity Section of the Criminal Division was recently removed from management responsibility amidst an investigation of whether he and other senior Justice Department officials were involved in decisions not to turn over exculpatory materials to various defense teams such as the defense teams for former Alaska Senator Ted Stevens, former Alaska Speaker of the House Peter Kott and former Alaska state legislator Victor Kohring.
- William Welch has been and continues to be one of the Justice Department Public Integrity Section prosecutors of record in Mr. Minor's trial and appeal to the Court of Appeals for the Fifth Circuit.
- As you are aware, a troubling pattern and practice has emerged in Public Integrity Section prosecutions managed by William Welch that has allowed ground level

¹ *Donnelly v. DeChristoforo*, 416 U.S. 637, 648-49 (1974) (dissenting opinion).

² *Berger v. United States*, 295 U.S. 78, 88 (1935). (emphasis added).

prosecutors to engage in the blatantly improper, unethical and unconstitutional trial tactic of withholding exculpatory evidence from defendants. Under the circumstances, this troubling prosecutorial abuse is at least as likely—if not even more likely—to have occurred in Mr. Minor’s case than in the Bush-era improper prosecutions of Republicans Stevens, Kott and Kohring.

- Indeed, the prosecutorial abuse in Mr. Minor’s case is not even limited to the government’s improper withholding of exculpatory evidence. The government’s legal arguments for its trumped up bribery-type charges were disingenuous and overreaching, including but not limited to its arguments regarding the proof required to convict Mr. Minor. Furthermore, Mr. Minor’s case is replete with evidence that he was politically prosecuted by the Bush Justice Department and the local U.S. Attorney. *See, e.g.*, Exhibit 3, attached April 17, 2008 Majority Staff Report of the House Committee on the Judiciary Prepared For Chairman John Conyers, Jr., at iii and 26-30.³
- The serious questions raised regarding Mr. Minor’s selective political prosecution, as well the government’s disingenuous overreaching in feigned legal support of its trumped up political charges, make it all the more unlikely that the government complied with Mr. Minor’s *Brady* requests for disclosure of all exculpatory or favorable evidence.
- The Justice Department prosecutors over whom Mr. Welch had senior management responsibility were overreaching in their representation of the law to the district court and the Fifth Circuit regarding the legal proof required to convict Mr. Minor.⁴ Such disingenuous overreaching includes, but is not limited to the fact that the prosecutors secured a quid pro quo bribery type indictment against Mr. Minor, but maintained that the government was not required to prove a quid pro quo to convict Mr. Minor. Furthermore, the prosecutors repeatedly acknowledged at trial that the bribery charges against Mr. Minor involve campaign contributions, but maintained the government has *never* been required to prove a quid pro quo, much less an explicit quid pro quo for the § 1346 honest services mail and wire fraud bribery charges and the § 666 federal bribery charges against Mr. Minor. To the contrary, the same Justice Department has been specifically required to prove such quid pro quo proof in honest

³ The House Judiciary report also recognizes that other “politicization of federal prosecutions under the Bush Administration” include the Wisconsin case of Georgia Thompson in which the Seventh Circuit, upon finding the government’s similarly overreaching legal theories to be “preposterous,” took the extraordinary step of ordering Georgia Thompson released from prison the day of oral argument. *Id.* at ii; *United States v. Thompson*, 484 F.3d 877 (7th Cir. 2007).

⁴ *See, e.g.*, Exhibit 4, attached Counsel’s February 26, 2009 letter for Mr. Minor to Congressman John Conyers, Chairman of the House Judiciary Committee. (“Aside from the widely reported politicization of the Department of Justice, there are also very serious questions regarding the lengths the Department of Justice went to in Mr. Minor as well as Governor Siegelman’s cases to disingenuously argue legal support for the trumped up political charges.”).

services bribery and federal bribery prosecutions in other parts of the country regardless of whether such bribery charges arise in the campaign fundraising or non-campaign fundraising context. McCormick v. United States, 500 U.S. 257, 269-73 (1991) (explicit quid pro quo requirement for campaign context cases); United States v. Tomblin, 1369, 1379 (5th Cir. 1995) (Fifth Circuit applied McCormick requisite quid pro quo to “bribery statutes”); United States v. Allen, 10 F. 3d 405, 411 (7th Cir. 1993) (same); United States v. Kincaid-Chauncey, 2009 WL 415567, **11, 15-16, n. 16 at 16 (9th Cir. Feb. 20, 2009) (recognizing McCormick’s explicit quid pro quo requirement applies to § 1346 honest services bribery charges and that a quid pro quo requirement also applies to honest services bribery non-campaign context cases); States of America v. Don Eugene Siegelman, Richard Scrushy, No. 07-13163, at *814-17 (11th Cir. March 6, 2009) (publish) (recognizing the courts have applied McCormick’s explicit quid pro quo requirement to § 666 federal bribery and § 1346 honest services bribery charges); Luzerne County Retirement Bd. v. Makowski, 2007 WL 4211445, *43 (M.D. Pa. 2007) (applied McCormick’s campaign context explicit quid pro quo requirement to RICO predicate acts of § 1346 honest services bribery charges); United States v. Malone, 2006 U.S. Dist. LEXIS 63814, *3-4 (D. Nev. 2006) (“This court has previously found the Supreme Court’s reasoning in McCormick equally applicable to charges of honest services wire fraud where the ‘scheme or artifice to defraud’ involved payment of campaign contributions”); United States v. Warner, 2005 WL 2367769, *5 (N.D. Ill. Sept. 23, 2005) (same); United States v. Zucchet, No. 03cr2434 JM (S.D. Cal. Nov. 10, 2005) (recognized McCormick’s First Amendment concerns and that “[a] prerequisite to criminal liability involving campaign contributions under the Hobbs Act and honest services wire fraud is the *indispensable requirement* of a quid pro quo.”); United States v. Sun-Diamond Growers, 525 U.S. 398, 404-405 (1999) (non-campaign context Agriculture Department case recognizing that public corruption bribery charges require quid pro quo proof “in exchange for” a specific official act); United States v. Jennings, 160 F.3d 1006, 1020-1022 (4th Cir. 1998) (non-campaign context § 666 federal bribery case recognizing requirement that jury instructions must explain that quid pro quo proof “*in exchange for*” a specific official act is *required for conviction*); United States v. Kemp, 500 F.3d 257, 281 (3d Cir. 2007) (non-campaign context case finding that the Supreme Court Sun-Diamond’s quid pro quo requirement “is equally applicable to bribery in the honest services fraud context, and we conclude that bribery requires ‘a specific intent to give or receive something of value *in exchange for* an official act.’” (quoting Sun-Diamond, 526 U.S. at 404-405).⁵

- Thus, as in the above noted *Georgia Thompson* case in Wisconsin, the prosecutors’ legal theories for convicting Mr. Minor were “preposterously” overreaching.

⁵ Counsel is also aware that a Public Integrity Section attorney, in another case in which the government represented it has *never* been required to prove quid pro quo proof for federal bribery charges involving campaign fundraising, was actually Justice Department counsel of record in just such a case in another Circuit Court.

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- Indeed, contrary to the above overreaching legal positions taken in Mr. Minor's case by prosecutors under the management of Public Integrity Section Chief William Welch, Matthew Friedrich, the Justice Department's previous Acting Assistant Attorney General of the Criminal Division, was even quoted on the front page of *USA Today* and other news services on July 30, 2008, as explaining that the standard of proof required for Senator Steven's gratuity indictment—as opposed to a bribery indictment such as Mr. Minor's—was a lesser standard since “Bribery *requires* proof of a specific agreement of a *quid pro quo* of this for that.”
- Nevertheless, the Justice Department prosecutors under the management of William Welch prevailed upon the district court in the second trial in 2007 to allow Mr. Minor to be convicted of the bribery charges without being “required” to provide any “in exchange for,” or “this for that” quid pro quo proof of a specific quid pro quo agreement.⁶ Such trial tactics by the prosecutors plainly ignored their duty to be “servants of the law” and duty “to refrain from improper methods calculated to produce a wrongful conviction.” *Berger*, 295 U.S. at 88.
- Mr. Minor's *Brady* requests included but were not limited to “(a) Any statement by any defendant or his or her agent that references the lawful activities of Paul Minor to the extent those activities relate to any defendant, including but not limited to statements that there were no *quid pro quos* in any dealings with judges and that the *exchange of things of values* were not based on the performance of any official acts.” Exhibit 1, at 3.
- Serious questions have been raised by Mr. Minor's defense team's interviews with various government witnesses that have determined that such witnesses provided exculpatory information to the government before the trials, for example, that there was no quid pro quos in Mr. Minor's dealings with the co-defendant judges. Those witnesses include but are not limited to Janet Miller, Mr. Minor's business manager, who told the government that she did not believe Mr. Minor's contact with the judges was improper and that she was unaware of any evidence of a quid pro quo agreement between Mr. Minor and the co-defendant judges. Mr. Minor's former law associates Mark Lumpkin and Jim Reeves provided similar statements related to there being no quid pro quos in that they had done all the legal work on the cases in question and the cases were decided on the merits with no illegal fix in exchange for the official action

⁶ The district court required quid pro quo proof for the same bribery charges in Mr. Minor's first trial in 2005. As described by the April 17, 2008 House Judiciary Committee Majority Staff Report for Chairman Conyers, in the first trial “Mr. Minor was acquitted of most charges while the jury hung on others. *On retrial, after the presiding judge revised his evidentiary rulings and relieved the prosecution of the need to prove certain elements of the alleged [bribery] crime, Mr. Minor was convicted of what have been described as ‘vague’ charges based on alleged efforts to obtain an unfair advantage from the two lower court judges, again through loan guarantees, and again despite the fact that Mississippi law allows such guarantees.” Id. at 26-27. (emphasis added).*

taken on the cases. Jennifer Diaz told the government there had been no improper conduct between Mr. Minor and her husband Mississippi Supreme Court Justice Oliver Diaz. There were numerous other witnesses who told the government there had been no quid pro quos between Mr. Minor and the co-defendant judges, but Mr. Minor was prevented from calling these witnesses since the government did not comply with its *Brady* duty. The government provided no *Brady* duty pre-trial disclosure of such exculpatory information or information unfavorable to its case from these or other witnesses.

- Similarly, the government disclosed no information that questioned the credibility of the government's witnesses. For example, Mr. Minor learned that in all of government witness Radlauer's 17 interviews with the government and testimony before several grand juries he never stated to the government that Mr. Minor told him to lie to the FBI; yet, he provided testimony to that effect at trial.
- Such trial tactics by the prosecutors violated their *Brady* duty to disclose exculpatory evidence or evidence unfavorable to the government's case, as well as their duty to be "servants of the law" and duty "to refrain from improper methods calculated to produce a wrongful conviction." *Berger*, 295 U.S. at 88.
- Mr. Minor and many others have repeatedly raised serious issues and concerns that he was prosecuted for political reasons. For example, the April 17, 2008 House Judiciary Majority Staff report raises serious questions and concerns regarding whether Mr. Minor was prosecuted by the Bush Justice Department out of selective political motivations. *Id.* at iii and 26-30. (raising selective political motivation concerns regarding bribery charges being brought against Mr. Minor for commonplace political fundraising practices, raising selective political motivation concerns regarding Mr. Minor being convicted without the government being required to prove the essential quid pro quo proof element for the alleged bribery crimes, raising selective political motivation concerns regarding the political timing and potential politically motivated reasons for prosecuting a major Democratic fundraiser, and raising concerns that other individuals connected with Republicans would have been prosecuted as well if the prosecution of Mr. Minor was not in fact politically motivated and based on trumped up charges). Indeed, as you may be aware, the House Judiciary Committee is expected to interview Karl Rove soon, and the interview will include questions to Mr. Rove regarding whether he or other Bush White House or Justice Department officials were involved in seeking Mr. Minor's prosecution for political reasons. Similarly, were the Bush Justice Department genuinely committed to bringing prosecutions for the type of specious and unfounded campaign related bribery charges it lodged against Mr. Minor it would have prosecuted other Republican connected attorneys and judges engaged in similar campaign fundraising conduct with Mr. Minor. Furthermore, Mr. Minor has repeatedly raised serious questions regarding whether he was politically prosecuted that include but are not limited to letters to the House Judiciary Committee, the Justice Department Office of Professional Responsibility ("OPR") and the Justice Department Office of the Inspector General ("OIG"). See, e.g., Exhibit 5, attached

October 22, 2007 Counsel's letter from Paul Minor to House Judiciary Committee; Exhibit 6, attached October 14, 2008 letter to Justice Department OPR (seeking a thorough investigation, for example, of whether "Mr. Minor's prosecution [was] in any way connected with political goals to implement Republican policy changes such as tort reform? If so, who was involved in advocating and/or supporting Mr. Minor's political prosecution, including but not limited to Dunn Lampton [U.S. Attorney], any Department of Justice and/or White House personnel and any other co-conspirators?"; "Was there any connection between Dunn Lampton's name being taken off the Second List of U.S. Attorneys recommended for replacement and the December 6, 2005 re-indictment of Mr. Minor after his 2005 trial resulted in no conviction?" *Id.* at 4.⁷; Exhibit 7, attached Counsel's October 28, 2008 letter to Justice Department OIG (discussing the serious questions raised regarding Dunn Lampton and other Bush Administration officials' possible connection with politically prosecuting Mr. Minor encompassed in the OIG and OPR September 2008 Report findings, entitled "*An Investigation into the Removal of U.S. Attorneys in 2006*"); Exhibit 8, attached Counsel's December 3, 2008 letter to Chairman John Conyers, Jr., House Judiciary Committee (discussing serious questions regarding whether U.S. Attorney Dunn Lampton should have recused himself from Mr. Minor's case because of glaring conflicts and whether U.S. Attorney Lampton politically prosecuted Mr. Minor); Exhibit 9, attached Counsel's December 12, 2008 letter to Chairman John Conyers, Jr., House Judiciary Committee (discussing the fact that 8 months had passed with no action since the Committee directed the Justice Department to investigate whether Mr. Minor was prosecuted for political reasons and seeking the appointment of an independent, special prosecutor); Exhibit 11, attached Counsel's February 26, 2009 letter to Chairman John Conyers, Jr., House Judiciary Committee (requesting the Judiciary Committee not to allow those responsible for Mr. Minor's political prosecution to escape investigation and accountability and bringing to the Committee's attention the lengths the Bush Justice Department went to prosecute Mr. Minor by disingenuously overreaching in arguing that no quid pro quo was required for its trumped up bribery charges).

Accordingly, under the circumstances of Mr. Minor's case, it is most unlikely Mr. Minor's *Brady* requests for disclosure of exculpatory evidence or evidence unfavorable to the government's case were given serious consideration and compliance with the Justice Department's *Brady* duty during the timeframe the requests were made. Similarly, under the

⁷ In early 2005, U.S. Attorney Lampton was included on the U.S. Attorneys removal list. High-ranking Justice Department officials such as Deputy Attorney General James Comey and Associate Attorney General David Margolis also expressed concerns about Mr. Lampton in 2005. In August 2005, U.S. Attorney Lampton's first prosecution of Mr. Minor ended with an acquittal on various charges and a hung jury on other charges. In December 2005, U.S. Attorney Lampton re-indicted Mr. Minor. In January 2006, over the objections of career Justice Department professionals, White House liaison Monica Goodlin asked that Mr. Lampton's name be removed from the firing list. In January 2006, U.S. Attorney Lampton was removed from the firing list. *See, e.g.,* Exhibit 7 at 2; *see generally, "An Investigation into the Removal of U.S. Attorneys in 2006."* (Justice Department OPR and OIG Report).

politically charged circumstances and precarious overreaching by the prosecutors to secure Mr. Minor's conviction at any cost to their obligation to be fair and impartial, it is most unlikely the prosecutors under William Welch's management were adhering to their duty to be "servants of the law" and their duty "to refrain from improper methods calculated to produce a wrongful conviction." *Berger*, 295 U.S. at 88.

Indeed, in light of the additional politically charged circumstances and prosecutorial overreaching involved in Mr. Minor's case, counsel respectfully submits that the case for your seeking Mr. Minor's immediate release and dismissal of his case is even more compelling than the circumstances of the improper and tragic prosecution of Senator Ted Stevens at the end of his life-long career of service to his country. Alternatively, at a minimum, counsel respectfully submits that you should seek Mr. Minor's immediate release pending full review of his case.

The public's confidence that America's criminal justice system does not in any way tolerate such runaway political prosecutions—for Democrats or Republicans. Moreover, the public's confidence in the Department of Justice's prosecutive decisions will only be restored when all parties having a role in Paul Minor and other defendants' political prosecutions across the country are fully investigated, held accountable and brought to justice.

Sincerest and Best Regards,



/s/ Hiram Eastland

cc: Lanny A. Breuer
Assistant Attorney General
Criminal Division
U.S. Department of Justice

Kevin Ohlson
Chief of Staff to Attorney General Eric Holder