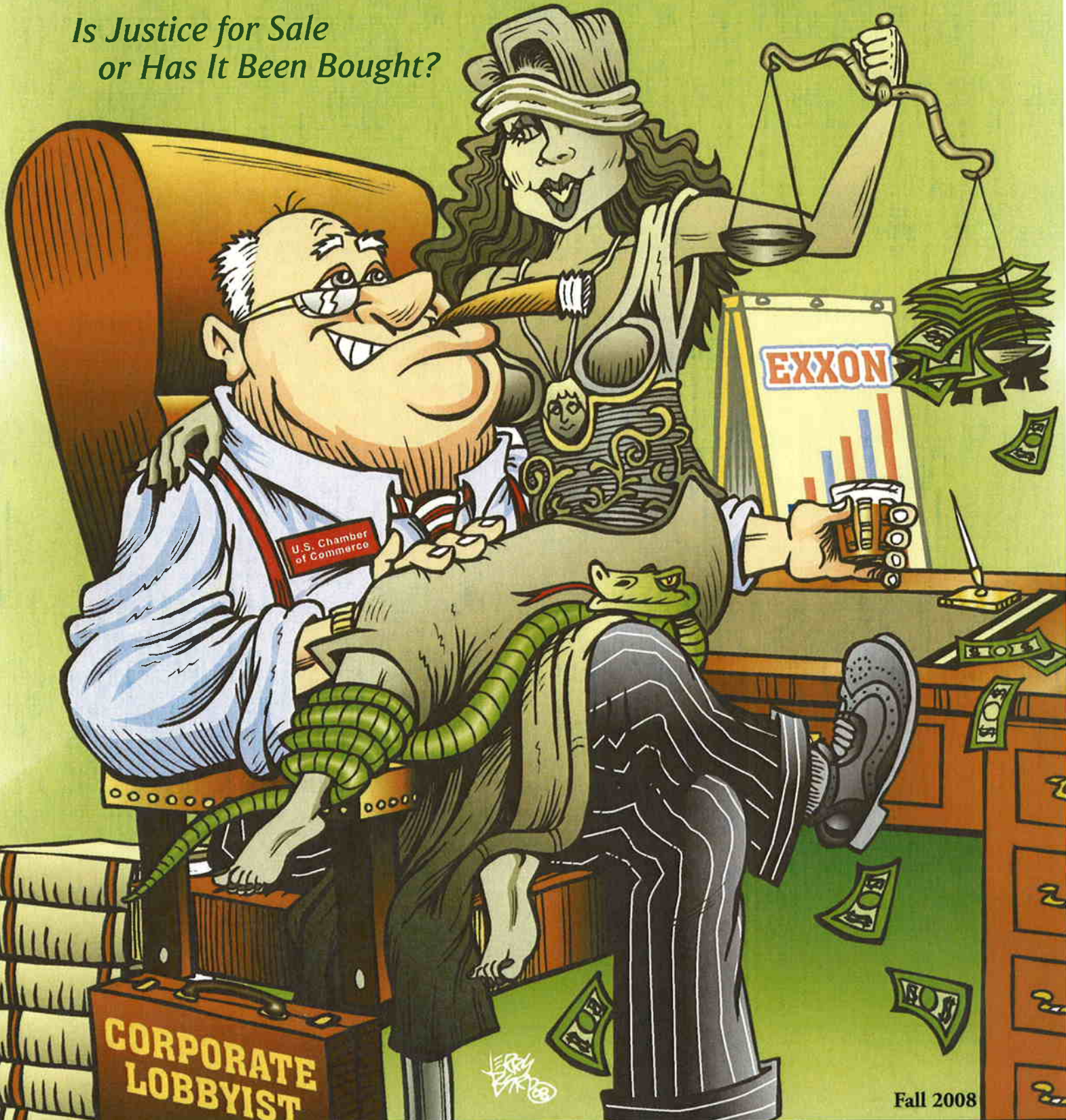


# The American Trial Lawyer

A MAGAZINE FOR TRIAL LAWYERS & A VOICE FOR JUSTICE

*Is Justice for Sale  
or Has It Been Bought?*



Fall 2008

U.S. CHAMBER OF COMMERCE'S WAR ON JUSTICE • POLITICAL PRISONER • CELL PHONE DISEASE

# *The* American Trial Lawyer

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& A VOICE FOR JUSTICE

## {THE EDITOR'S LETTER}

Welcome to The American Trial Lawyer, a new magazine embracing the opportunities and addressing the challenges of representing individuals in America's 21st century courtrooms. We've seen big business, in tandem with their political allies, try to shut the courthouse doors to many American families who have suffered injury or death of a loved one or endured economic calamity thanks to fraudulent corporate schemes. Likewise, attorneys defending the accused in criminal courts are rightly concerned that George Bush's War on Terror has become a war on the Constitution. It may feel good to rail against corporate distortions or the neocons' assaults on our constitutional liberties, but after the shouting, what then?

At The American Trial Lawyer, we want to understand our opponents' strategies and tactics and become better advocates for our clients by keeping abreast of new legal trends. We encourage frank discussion of political and social currents that will directly affect not only how jurors perceive justice but also whether legislators and judges enhance or diminish it. We'll inform you of rapid changes in the business and technological aspects of trial lawyering and help you become more efficient in the delivery of legal services to your clients. Last, but certainly not least, we'll offer you tips on living a more productive and rewarding life as a trial lawyer. Some columns may even make you smile.

Looking forward to our journey together,

Jim Robertson  
Editor

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# THE

## BIGGEST POLITICAL TARGET OF ALL FOR THE BUSH WHITEHOUSE AND THE KARL ROVE PROSECUTION MACHINE WAS IN ALABAMA.

DON E. SIEGELMAN (FORMER ALABAMA SECRETARY OF STATE, ATTORNEY GENERAL, LT. GOVERNOR AND GOVERNOR) WAS THE MOST SUCCESSFUL DEMOCRATIC POLITICIAN IN POST-WALLACE ALABAMA. HIS CASE MARKS AN AMAZING ODYSSEY INVOLVING TWO FEDERAL PROSECUTIONS, A CONVICTION AND, FOLLOWING EXPLOSIVE DISCLOSURES OF POLITICAL MANIPULATION, A DRAMATIC AND QUITE EXTRAORDINARY COURT OF APPEALS ORDER FOR HIS RELEASE. BUT THE CONSTANT THAT LINKS THE MANY STRANDS OF HIS CASE IS KARL ROVE.

*GOVERNOR DON SIEGELMAN walks towards the media to make a statement after being released on an appeal bond from federal prison in Louisiana on Friday, March 28, 2008 in Vestavia, Ala. (AP Photo/Butch Dill)*



# POLITICAL

The prosecutions were brought by two U.S. attorneys with tight connections to Rove, one of them the wife of Rove's close friend, William Canary. The initial investigation was commenced by Rove's client, then-Alabama attorney general, now federal appeals court Judge William Pryor, and was pursued through the time Rove was masterminding yet another project—installing a new Republican governor in Alabama and solidifying the Republican Party's hold on the Alabama statehouse.

The cover was blown off this entire operation when Republican campaign volunteer attorney Jill Simpson came forward and testified about a telephone conversation she had with Canary and a group of senior figures working on the Riley, Republican candidate for Governor, campaign. The major topic of their discussion was insuring that Siegelman disappear entirely from Alabama's political scene, and the punchline was delivered by Canary: "I've already gotten it worked out with Karl. Karl has spoken with the Justice

Department and they are already pursuing Siegelman."

The first pass, brought in Birmingham by U.S. Attorney Alice Martin failed at the opening of the case when, pressed by the judge, Martin was forced to acknowledge that she lacked a prima facie case against Siegelman. She dropped her charges. Canary referred to Martin as "my girl"—he had served as her campaign manager in a prior unsuccessful run for a judgeship, and continued to maintain a very close relationship with her. With this



*Prosecutors J.B. PERRINE, left, LOUIS V. FRANKLIN, SR., middle, and STEVE FEAGA, right, make their way to federal court for the verdict in the federal trial against former Gov. Don Siegelman. (AP Photo/Rob Carr)*

# PRISONER #1

BY SCOTT HORTON

GOVERNOR DON SIEGELMAN and his wife Lori wave to parade participants during inaugural ceremonies. At right is Siegelman's daughter Dana. (AP Photo/Dave Martin)



defeat, the baton was passed to Canary's wife, Leura Canary, the U.S. Attorney in Montgomery.

Mrs. Canary pursued a grab bag of charges, but media attention focused heavily on claims that HealthSouth CEO Richard Scrushy had given \$500,000 to a foundation established by Siegelman to lobby for an education lottery, Siegelman's pet project, in exchange for an appointment to an Alabama oversight board. Curiously, Scrushy, a Republican, had supported Siegelman's opponent in the 1998 Governor's election and had supported a long list of prior Republican candidates. He had been appointed to the same oversight board by the last three governors. Yet in the minds of the prosecutors, only his support for Siegelman raised questions.

The problems with the prosecutors' case start with the notion that what was done was a crime. Applying the same standard, 146 individuals—a number of them now cabinet officers—contributed \$100,000 or more to the Bush-Cheney campaigns in 2000 and 2004 and subsequently secured appointments as high government officials or members of the transition team. Karl Rove's fundraising programs figured elite positions called "rangers" and "pioneers" for major

donors. "Rangers" and "pioneers" could have an appointment for the asking. Yet the Bush Justice Department never looked into any of these appointments the way it examined the Siegelman case. Evidently the rule evolved was applicable exclusively to Democrats.

Further complications weighed the case down. The prosecution's two key witnesses were not viewed as credible by the prosecution itself. One of them had originally come to prosecutors with sharp allegations of corruption involving two Republicans—Bill Pryor and Jeff Sessions—and only minor claims regarding Siegelman. Yet the prosecutors insisted on not examining the claims involving Pryor and Sessions, and only looking into the accusations against Siegelman. One prosecutor was quoted in *Time magazine* saying that they wouldn't "go after the home team." Even more astonishing, Canary tasked the negotiation of a plea bargain agreement to her first assistant, who was a close personal

friend of Pryor and Sessions—indeed, her husband was Pryor's counsel and was involved in Sessions's campaign. This is one of more than a dozen serious ethical breaches by prosecutors in the course of the case, any one of which would be extraordinary, but the confluence of all suggest plainly that something extremely foul was afoot. Indeed, Canary herself managed the prosecution while her husband was advising Republicans campaigning against Siegelman. She "recused" herself only after these facts were brought to the attention of the Justice Department through a formal complaint, and after her "recusal," she continued to be involved in the case.

The Siegelman case came to trial before Mark Everett Fuller, a federal judge appointed by George W. Bush. Fuller had, until shortly before his appointment to the bench, been a member of the Executive Committee of the Alabama G.O.P. He had also been involved in two elections as campaign manager for a Republican candidate

against whom Siegelman had campaigned aggressively. His prior position had been as a district attorney in two Alabama counties. When he stepped down, Siegelman appointed his successor and an audit was commenced of Fuller's management of the district attorney's office which uncovered serious irregularities. Fuller told a local television station that the audit was "politically motivated," suggesting strongly that he felt a grudge against Siegelman. All of these facts surfaced only after Siegelman was convicted in a trial marked by a series of extraordinary pro-prosecution rulings by Fuller.

The jury originally split evenly and was at a deadlock. However, Fuller insisted that they return a verdict, and none of the jurors had any doubt as to the verdict that Fuller wanted. They acquitted Siegelman of 25 of 32 counts but convicted him on the prosecutors' claims relating to the Scrushy contributions. Following the verdict, Fuller put the case over for one year before sentencing. The lengthy delay may have been designed to prevent Siegelman from demonstrating that the jury had been tampered with. Defense counsel had received from anonymous sources a series of copies of emails suggesting communications between jurors and showing improper outside influences on the jury. Fuller refused to allow questioning of the jurors about the matter and refused to issue a subpoena to ascertain that the emails were correct. At sentencing, Fuller departed dramatically upward from guidelines, sentencing Siegelman to more than seven years. Fuller justified the severity of the sentence on the grounds that Siegelman had accused the prosecutors of politically selective prosecution—accusations now essentially proven.

Judge Fuller also directed Siegelman to be manacled and taken directly from the courtroom to prison. He refused to act on Siegelman's motion to be free pending appeal. The Court of Appeals in Atlanta issued two orders, demonstrating a rising level of irritation with Fuller, requiring him to

**The PROBLEMS with the PROSECUTORS' case start with the notion that what was done was a CRIME. Applying the same standard, 146 individuals—a number of them now cabinet officers—contributed \$100,000 or more to the Bush-Cheney campaigns in 2000 and 2004 and subsequently secured appointments as high government officials or members of the transition team. Karl Rove's fundraising programs figured elite positions called "rangers" and "pioneers" for major donors. "Rangers" and "pioneers" could have an appointment for the asking.**

rule on Siegelman's motion. When after a delay of many months he finally complied with their directions, his decision was almost immediately reversed by the appeals court, which directed that Siegelman immediately be set free, noting that there was substantial reason to believe that his appeal would be meritorious.

Fifty-four former attorneys general from around the country, led by former Arizona attorney general Grant Wood, a Republican and the national co-chair of the John McCain presidential campaign, petitioned Congress to examine the prosecution and trial of Siegelman, noting a series of gross irregularities. The Siegelman case is now the subject of a special inquiry by the House Judiciary Committee, which has demanded that the Justice Department surrender documents relating to the case and produce representatives to testify about it. The Justice Department has stonewalled these requests, refusing to produce either witnesses or documents. On July 1, 2008, Congress issued subpoenas to compel production of documents. It previously issued subpoenas to White House chief of staff Joshua Bolton, presidential legal counsel Harriet Miers and Karl Rove, requiring their appearance and testimony. Each has resisted, invoking executive privilege. Indeed, Rove did so even after his attorney advised NBC News chief legal correspondent Dan Abrams that Rove would gladly appear and testify.

CBS News's *Sixty Minutes* conducted a four-month long investigation into the Siegelman case and substantially validated the accusations of political manipulation, including charges that Karl Rove was involved in directing the case. Rove was interviewed by CBS but refused to allow the interview to be used in any way and then falsely claimed that he was never contacted or interviewed. *Sixty Minutes* also found evidence that prosecutors had coached and improperly cajoled the key witness whose testimony provided the sole basis for Siegelman's conviction—conduct which was at least highly unethical, and possibly criminal. The CBS reporters also found evidence that prosecutors had failed to turn over and lied about the existence of highly exculpatory evidence which would have demolished the testimony of the witness.

The Justice Department's Office of Professional Responsibility (OPR) claims that it is now investigating these accusations. However most of the key figures involved have apprised me that OPR had never contacted them, asked to view evidence, nor conducted an interview of any sort. Exactly what is encompassed by OPR's "investigation" is therefore something of a mystery. Siegelman remains out by order of the 11th Circuit pending appeal. Will the political prosecution stop there?