

EXHIBIT D

DECLARATION OF ELMER HARRIS

Siegelman and Scrushy Criminal Trial

36. The indictment and prosecution of Governor Siegelman and Richard Scrushy was either politically motivated or for some unknown reason; however, the fact that so many State Attorney Generals opposed such prosecution and sought to overturn the verdicts raises in my mind the spectre of prosecutorial misconduct.
37. Since I was the person who had asked and recommended that Richard Scrushy serve on the CON Board, the government never asked me to appear as a witness for the government. That fact likely would be inconsistent with the prosecution's conspiracy theory of the case.
38. Instead, I was called by defense counsel to testify at the trial of Defendants Siegelman and Scrushy. I testified at that time and continue to believe that there was nothing wrong with the intent or conduct of Siegelman and Scrushy regarding contributions which Scrushy and I discussed to the Foundation or the appointment of Scrushy (or someone he recommended) to the CON Board.
39. I believe that the prosecution of Siegelman and Scrushy demonstrates a tremendous miscarriage of justice and exemplifies the kind of political, or some other unknown and misguided reason for prosecution that we should never have, should never encourage in the future, and certainly should never still continue to support or endorse in the United States.
40. This gross miscarriage of justice needs to be corrected - immediately.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: August 31, 2016


Elmer Harris

UNITED STATES OF AMERICA
Before the
DEPARTMENT OF JUSTICE
OFFICE OF THE PARDON ATTORNEY

United States of America

v.

Case No: 2:05cr119- MEF

Richard M. Scrushy,

Defendant

DECLARATION OF ELMER HARRIS

I, Elmer Harris, make the following declaration and submit it to the Executive Branch of the United States Government, including the Department of Justice, Office of the Pardon Attorney, in support of a pardon of Richard M. Scrushy ("Scrushy" or "Defendant") for the unlawful prosecution of Mr. Scrushy and former Governor Donald Siegelman by the United States Attorney for the Middle District of Alabama in June 2006:

Background

1. I am seventy – seven (77) years old, reside in Cropwell, Alabama, and am competent to testify about the matters set forth herein.
2. I received my undergraduate degree (1962), a masters degree (1968) in electrical engineering, and a masters degree in Business Administration (1970) from Auburn University. I have also received at least six (6) honorary Doctor's degrees from several educational institutions in Alabama, including Auburn University, University of Alabama at Birmingham, Troy University in Montgomery, Faulkner University, Jacksonville University, and Huntingdon College.

3. In 1963, I also joined the Alabama Air National Guard and attended U.S. flight school at Webb Air Force Base in Texas in 1964/1965. I ultimately rose to the rank of Brigadier General, and retired from the Alabama Air National Guard after twenty-five (25) years of service.
4. From 1958 to 2002, I was employed by Alabama Power Company in various capacities, from cooperative education student after high school, to employee in the engineering department, to Chief Financial Officer (late 1970s), and ultimately to President and Chief Executive Officer (1989). I retired from Alabama Power in 2002 as its Chairman.

Board of Director Memberships

5. During my career, I have served on the board of directors of at least thirty-seven (37) institutions and companies, including Auburn University Foundation, Alabama Business Council, Mercedes-Benz USA International Inc., Samford University Board of Trustees, AmSouth Bank, The Southern Company, and Alabama Power Company.

Civic Work

6. From 1963 to 2007, I have served no less than seven (7) governors in the State of Alabama, whether Democrats or Republicans.
7. After I retired from Alabama Power, I served as Chairman of the Public Policy Group in Birmingham that not only sought to correct and streamline the Alabama State Constitution, but also to enhance the educational system in the State of Alabama.
8. I also served as Honorary Counsel General of Japan for over a decade.

Fund Raising

9. During my lifetime, I have raised close to \$1 billion dollars for charitable, civic, and economic development organizations.
10. Prior to any fund raising efforts, I made it my practice to identify those people who held positions of leadership in large corporations and banks throughout Alabama. I identified and met with these people to build relationships of confidence and trust.
11. While President and/or Chairman of Alabama Power – like President or Chairman of any large corporation – I was frequently asked to be chairman of various fundraisers, including those for political candidates and their

campaigns, as well as for civic, charitable, and economic development organizations. The process of fund raising requires identifying potential lead givers, being very aggressive, and challenging people to give more than they think they can. There is nothing improper or illegal about the process.

Relationship with Richard Scrushy

12. Long before I engaged in any fund raising efforts for Governor Siegelman's transition team in late 1998, I became personally acquainted and often met with Richard Scrushy for breakfast every two or three months at HealthSouth, where he was the company's Chairman and CEO. There was no set agenda for our breakfast meetings. Instead, we discussed our respective companies and our involvement with government, politics, and regulatory initiatives coming out of Washington, D.C or local / state governments. As companies in regulated industries, we had to be involved in politics. Otherwise, both of our companies could be damaged significantly or forced out of business.
13. I always found Richard Scrushy to be a person of good character and high integrity.

Governor Donald Siegelman Transition Team

14. It has been my practice to work with and support any sitting governor, whether Republican or Democrat, just as it has been my practice to know, support and work with the sitting President of the United States, including George H. Bush, William Clinton, George W. Bush.
15. In November 1998, at the request of Governor-elect Donald Siegelman, I agreed to serve as Chairman of Governor Siegelman's transition team. My duties included inaugural activities, departmental reviews, and selecting members of his cabinet. To finance these activities, especially the inaugural event, I engaged in fund raising. As part of that effort, I asked Richard Scrushy to contribute \$25,000 for the inaugural festivities and asked him to organize a personal flight for the country music group Alabama to perform at the Inaugural gala.
16. In conducting departmental reviews and selecting departmental appointments, I did not promise Richard Scrushy a position on or request Richard Scrushy to serve on the Alabama Certificate of Need ("CON") Board, which is the State of Alabama board that regulates and controls health care providers and studies the need for hospital facilities for which it issues certificates for their construction. Nor was Richard Scrushy promised – as a *quid pro quo* – in exchange for any current or future political contribution that he would be appointed to the CON board. Indeed, I know personally that Richard Scrushy had previously served three (3) terms on the CON board

under three (3) prior governors, and he had no desire to do so again, especially since he supported Fob James for governor, Siegelman's opponent. Accordingly, my testimony at the criminal trial of Richard Scrushy on this important point was as follows:

Q: What did you tell Mr. Scrushy at that meeting regarding the CON Board?

A: I told Mr. Scrushy that if you do not want to serve on the CON Board, and you can find another person who can do a good, effective job on the CON board, then go down there [to Montgomery, Alabama] and sit down in Governor Siegelman's office and tell him that. If you can't find someone who can do a good job, Richard, I think you ought to evaluate that and take the board position yourself. It is tough to get good people down there, ... and you ought not to hesitate to do that either.

Q: What was your impression as to whether Mr. Scrushy wanted to serve on the CON Board?

A: He did not want to serve on the CON Board. [H]e wasn't going to serve on the CON Board. He was going to tell Don Siegelman that he wasn't going to do it.

Q: Do you know whether Mr. Scrushy supported Governor Siegelman in the 1998 election?

A: He supported Fob James.

Trial Testimony of Elmer Harris ("Trial Test."), at 7045-46.

17. I explained to Governor Siegelman that it was "absolutely essential that you and Richard Scrushy get on the same wavelength." *Id.* at 7046. I had the same conversation with Richard Scrushy, because he had supported Governor Siegelman's opponent, Fob James. I suggested this to Richard Scrushy because I felt he ought to have a mindset of helping out the sitting Governor of Alabama, whether Democrat or Republican, for the good of the State of Alabama.
18. I even suggested to Richard Scrushy that he visit Governor Siegelman and have a "bury the hatchet" meeting to put their differences behind them and work together. I believe Richard had such a meeting, but not for purposes of obtaining a seat on the CON Board. He did it at my request.

Fund Raising for The Democratic Party's Foundation to Support A Referendum for State Wide Lottery for Educational Purposes

19. In 1999, during the transition period, Fournier J. "Boots" Gale III, a prominent Birmingham lawyer and friend of Governor Siegelman, formed a foundation – called the Alabama Education Lottery Foundation ("The Foundation") – to support a referendum in the State of Alabama to approve a statewide lottery to fund statewide educational improvements, especially among low income families.
20. During the late 1990s and early 2000s, Alabama Power, AmSouth Bank, Alfa Insurance, HealthSouth and other business supported statewide education. All of those companies were asked to give money to support educational improvements in Alabama.
21. In 1999, I spoke with Richard Scrushy about the formation of The Foundation and the get-out-the-vote drive in support of the referendum to fund the state lottery to pay for state-wide education. I explained to Richard Scrushy that the Alabama State legislature had approved a referendum for the lottery to fund statewide education.
22. I did not know at that time about any debt owed to the Democratic Party, and I did not know that Governor Siegelman had signed a personal guarantee for the debt. Since I did not know either of those things, I could not have communicated them to Richard Scrushy in which he would somehow contribute money to the Foundation and help retire the debt and thereby somehow give Governor Siegelman a personal benefit:

Q: Did you -- what was your understanding of that debt so far as to who it was owed to?

A: I didn't know anything about the debt.

Q. You didn't know anything about the debt. Did you ever discuss with Richard Scrushy that Governor Siegelman had guaranteed the debt?

A. I did not.

Q. Did you know that he had guaranteed the debt?

A. I did not.

Trial Test., pages 7052-53, 7091.

23. As Chairman of the Siegelman Transition Team, I do not know of a single personal benefit received by or given to Governor Siegelman.
24. Because I continued to assist Governor Siegelman after the transition period, I was informed later – after the referendum was defeated – that the debt owed to the Democratic Party remained. There is nothing unusual about a political party – Democrat or Republican – guaranteeing the loans for a political campaign. Yet, Governor Siegelman never intimated that he would get any benefit from any contribution to any foundation.
25. During one of our breakfast meetings, I explained to Richard Scrushy that the 1.3 million-customer base of Alabama Power was fifty percent (50%) in favor and fifty percent (50%) against the lottery. Accordingly, I decided that I would not authorize Alabama Power to contribute to that effort, even though it had the laudable purpose of providing and improving state-wide education in Alabama.
26. I explained to Richard Scrushy that, unlike Alabama Power, the geographical customer base HealthSouth was different, many of whom resided outside of Alabama. I explained that I thought The Foundation had been properly and legally organized and constructed by a major law firm in Alabama. I also informed Richard Scrushy that Fournier J. “Boots” Gale, a prominent Birmingham lawyer, organized the Foundation. I further explained that there was no dollar limit in Alabama on the size of permissible contributions, either by individuals or corporations, and it was legally permissible for him or HealthSouth, like any other corporation, to contribute to the Foundation.
27. Although I did not directly solicit any contributions from Richard Scrushy or HealthSouth for The Foundation, it was certainly my intent, hope and desire that he would do so. That was my purpose in discussing the need for contributions with him. In fact, I told Richard Scrushy that “Governor Siegelman would like you to do that.” *Trial Test.*, at 7070. I reiterated to Richard Scrushy that he had a perfect right under Alabama law to make a contribution and could give any amount he thought appropriate. *Id.* at 7071.
28. I never intended nor stated anything illegal or criminal in discussing the request with Scrushy, and he and I never discussed any notion or thoughts that a contribution to the Alabama Lottery Foundation would constitute illegal or criminal conduct. Any such thoughts would be way out of line with reality.
29. Several other CEOs of companies or related corporate executives were solicited for contributions, and some made contributions to the Foundation. But, unlike Richard Scrushy, none of them were indicted. I find this selective prosecution of Richard Scrushy both wrong and highly suspect.

30. There was no nefarious purpose underlying my discussions about contributions.
31. That the US Attorneys Office in the Middle District of Alabama would seek to prosecute Richard Scrushy and Don Siegelman over the HealthSouth contributions either to support the lottery or to help retire the debt owed to the Democratic Party was not only alarming, but as mentioned above also highly suspect. There never was anything intended – either in the words spoken between Richard Scrushy and me, or the conduct I saw exhibited – that suggested anything criminal.
32. The only conclusion I reached – then and now – about the motivation of the United States Attorneys Office in the Middle District of Alabama for bringing a criminal prosecution was that it was done purely for political or some other unknown reasons.

Governor Siegelman Appoints Richard Scrushy to the CON Board

33. As part of my duties as head of Governor Siegelman's transition team, I selected the people I believed would be the best suited for various departmental appointments, and made routine recommendations to Governor Siegelman during the transition. I was instructed by Governor Siegelman to "[f]ind the best people you can and give me the best advice you can." *Trial Test.*, at 7058. After having breakfast with Richard Scrushy, I recommended to Governor Siegelman that Richard Scrushy be appointed to serve on the CON Board provided the Governor could get him to say "yes". As noted above, Scrushy had already served three (3) terms on the CON Board at the request of three (3) different Governors, he knew the purpose and inner working of the CON Board, and with his 3-term experience, Scrushy would without doubt be the best person for the CON Board. However, I told the Governor Siegelman that Scrushy simply has informed me that he did not want to serve a fourth term on the CON Board. So, I told Governor that I told Scrushy to find someone else who could do a good job on the CON Board. But, if he were unable to find another person, Richard Scrushy himself ought to serve again. *Trial Test.*, at 7042-45.
34. In July 1999, Governor Siegelman appointed Richard Scrushy to the Alabama CON Board, an appointment that I thought was absolutely appropriate. The result was that Governor Siegelman had indeed appointed the best, and most experienced three term CON Board member to the CON Board as recommended to him by me, as Chairman of the Transition Team.

Meeting Between Governor Siegelman and Richard Scrushy

35. I told Governor Siegelman that he needed to meet with Richard Scrushy, and encouraged Richard Scrushy to meet with Governor Siegelman. I believe that the businessmen in Alabama have an obligation to support the incumbent Governor, whether Democrat or Republican, for the good of the State of Alabama. On this point I testified as follows:

Q: Did you have any discussion with him [Governor Siegelman] with regard to the relationship of him and HealthSouth to the Siegelman administration?

A: I said to Governor Siegelman that I'm going to get some funds from HealthSouth, for example, for the inaugural activities. I believe that it was absolutely essential that you [Governor Siegelman] and Richard Scrushy get on the same wavelength. There's going to come a lot of things during this administration in which you need the support of all the business people, not selective business people. So, why don't you, Governor Siegelman, talk to Richard Scrushy and see if y'all can't work out whatever differences you have."

Q: Now, did you have a conversation with Richard Scrushy about the same matter?

A: I did

Q: And what did you say?

A: I told him essentially the same thing. When we were talking about giving some contributions to the inaugural activities, you, Richard Scrushy, supported Fob James. Fob James lost the election. It's my assumption all the time that I'm going to support whoever is in office. Don Siegelman is in office. I don't care whether you like him or you don't like him; you need to sit down with him and talk about whatever differences y'all have and solve them, get them out of the way, so both of y'all can be helpful to each other.

Trial Test., pages 7,046 -47.

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