

WHEN DID THE US POSTAL INSPECTORS REPLACE OUR COURTS?

Yesterday, Artur Davis revealed yet another example of potential misconduct in the Don Siegelman case. He revealed that, at the same time as Judge Fuller was refusing Siegelman's lawyers' motions for an investigation into emails that may have proved juror misconduct, the government—the postal inspectors!—were conducting a secret investigation into the emails.

At issue is a series of e-mails that arose in 2006 suggesting that two jurors had outside influence as they decided Siegelman's bribery conviction. After he was found guilty, Siegelman sought a new trial over the e-mails, printed copies of which had been mailed to defense attorneys.

U.S. District Judge Mark Fuller denied the motion for a new trial, ruling that the allegations were unsubstantiated. Siegelman has cited the issue as a central point in his ongoing appeal.

Two weeks ago, the head of the Justice Department's appellate division, Patty Merkamp Stemler, informed Siegelman's attorneys that the department had discovered undisclosed information about the controversy as attorneys prepared for the appeal. In a July 8 letter, Stemler wrote that **while Siegelman's mistrial proceedings were pending, acting U.S. Attorney Louis Franklin asked U.S. postal inspectors to try to determine who sent the e-mails through the mail.**

U.S. Marshals later informed Fuller that the inspectors had concluded the e-mails were fakes. They determined, for

example, that one e-mail didn't match up with the corresponding juror's e-mail account.

But the information produced for prosecutors and given to the judge was never passed along to Siegelman's attorneys for cross-examination. [my emphasis]

Here's how Governor Siegelman explained the whole issue today:

The emails were mailed anonymously to defense lawyers and members of the media. They were allegedly between two jurors – including the jury foreman. The conversations in the emails were dated during the TRIAL and not deliberation. They discussed how to get others to go for conviction. One in particular said "Gov is up shit creek." Another said "all politicians r scum." Another said "37 coming along. Keep working on 20." – referring to juror numbers. This is just a sampling.

We filed a motion and asked that the emails be investigated. The prosecution objected and the judge overruled us. We filed an additional motion asking that the servers be preserved in case the appellate court wanted to go back later and investigate. The prosecution objected to that also and the Judge overruled us again.

Now we know that **after their protestations about how any investigation would destroy the sanctity of the jury process, the prosecution undertook a secret "investigation." The Judge was informed of the "results." Yet the defense was never notified.** The prosecution then told Judge Fuller that the emails were fabricated while the judge was considering our motion for a

new trial based on those same emails.

Judge Fuller then sat in judgment with prejudicial information in his mind that was never disclosed to the defense. The defense had no opportunity to be involved in the investigation, question anyone, or ask questions. A per se Due Process violation.

It was an outrageous breach of ethics. The government should never have conducted a secret investigation, the judge should never have been told, and above all, both the judge and the prosecutors should have immediately told us – yet we were never told until this last week, about one year and three months after the fact. [my emphasis]

In other words, the prosecutors won a judgment that **no one** should conduct an investigation into the emails, but then had an investigation conducted themselves. Rather than having full discovery on both sides, and rather than giving the Defense team copies of the evidence in question, the prosecutors made sure the investigation happened secretly. Rather than a transparent process conducted between two antagonistic sides of the case, postal inspectors conducted the investigation, in the dark of night.

That's what the government resorted to in its efforts to throw Don Siegelman in jail.

Our Attorney General, however, seems unperturbed by this news.

Davis: Another quick question. Disclosed this info on July 8 of this year. Do you know about the circumstances about which St[e]mler learned about these communications? Concern again would be this—One year after this ex parte communication, the Marshall service disclosed it to govt. Would raise

questions about whether they've turned over all information. Frankly, it appears that the Marshall service may not have told Ms St[e]mler until very recently. Does it trouble you that Marshall service didn't disclose contacts with Judge Fuller? Should Judge Fuller have disclosed that to Defense Counsel.

MM: Not going into Fuller's decision.

Apparently, the prosecutors in Siegelman's case decided to replace the antagonistic Court system with a postal inspector investigation—without telling anyone. And the Attorney General, seems remarkably sanguine that the Court system has been secretly replaced by the postal inspectors.

Update: Scott Horton has a much more thorough treatment of this, along with the letter describing the investigation.