

# MOST CONVICTIONS AGAINST SIEGELMAN UPHELD

Three Republican-appointed judges have upheld most of the convictions of Governor Don Siegelman—while throwing out two counts of Mail Fraud.

The opinion starts by invoking the controversy surrounding the case—then nods to deference to the jury in retaining the convictions.

This is an extraordinary case. It involves allegations of corruption at the highest levels of Alabama state government. Its resolution has strained the resources of both Alabama and the federal government.

But it has arrived in this court with the “sword and buckler” of a jury verdict. The yeoman’s work of our judicial system is done by a single judge and a jury. Twelve ordinary citizens of Alabama are asked to sit through long days of often tedious and obscure testimony and pour over countless documents to decide what happened, and, having done so, to apply to these facts the law as the judge has explained it to them. And they do. Often at great personal sacrifice. Though the popular culture sometimes asserts otherwise, the virtue of our jury system is that it most often gets it right. This is the great achievement of our system of justice. The jury’s verdict commands the respect of this court, and that verdict must be sustained if there is substantial evidence to support it. *Glasser v. United States*, 315 U.S. 60, 80 (1942).

Furthermore, to the extent that the

jury's verdict rests upon their evaluations of the credibility of individual witnesses, and the reasonable inferences to be drawn from that testimony, we owe deference to those decisions.

It's the jurors, fault, you see, even though several issues mentioned in the appeal pertain to problems with the jury.

You can read through the rest and see what you make of the Courts issue by issue treatment of Siegelman's appeal. But note, in particular, the centrality of Nick Bailey's testimony in the Court's decision to uphold most of the convictions.

That's important because—as 60 Minutes reported on its piece on Siegelman—there are allegations Prosecutors coached Bailey's testimony and then did not turn over notes from that coaching to Siegelman's defense team to use to impeach Bailey. Here's Scott Horton explaining what happened (and Mukasey's non-denial denial of the problem).

Back on February 24, CBS News's *Sixty Minutes* aired a story on the prosecution of the Siegelman case that contained two bombshells. CBS interviewed Nick Bailey, the former Siegelman aide whose testimony literally sent Siegelman to prison. Bailey told CBS that he was coached and cajoled by prosecutors with more than seventy interviews during which he acknowledged that he didn't recall key points at which they demanded that he testify. He was also coached to write down testimony in the form the prosecutors wanted it, doing so repeatedly until the story was recounted to their liking. I verified this account by interviewing the two individuals who interviewed Bailey on behalf of CBS News. Subsequently I identified another individual who had spoken with Bailey

and received the same account from him.

And click through to see Mukasey's non-denial denials of problems surrounding Bailey's testimony.

Given the Court's assessment of the case—and the way they use Bailey's testimony as the primary support for the remaining convictions—the allegations about Bailey's testimony remain one troubling detail.

And there's another one. Here's how the Court dismissed the allegations that the prosecution team did its own investigation into jury tampering that it did not reveal to Siegelman's team (the background on this is at the Horton link above).

Defendants moved just before oral argument for permission to file supplemental information regarding juror misconduct. At oral argument, the government represented to the court that its investigation into that misconduct did not involve the allegations of juror misconduct at issue in this appeal. For this reason, we shall deny the motion.

Well, that was easy.

It's funny. In ruling that the upward departure giving Siegelman a 7 year sentence, the Court relied heavily on how Siegelman's behavior resulted in a "loss of public confidence" that merited the upward departure. But there's little about this ruling, I think, that will eliminate the loss in public confidence that this case has caused.