



U.S. Department of Justice

United States Attorney
District of New Jersey

NORMAN GROSS
Assistant United States Attorney

Camden Federal Building and
United States Courthouse
P. O. Box 2098
Camden, New Jersey 08101-2098

PHONE: (856) 968-4930
FAX: (856) 968-4917

February 8, 2008

Electronically Filed

Honorable Freda L. Wolfson
Room 5050
Clarkson S. Fisher Federal Building
and United States Courthouse
402 East State Street
Trenton, NJ 08608

Re: United States v. Wayne Bryant and R. Michael Gallagher
Crim. No. 07-267 (FLW)

Dear Judge Wolfson:

Please allow this letter to respond to an exhibit attached to defendant Bryant's Reply Brief In Support of Motion For Discovery And Evidentiary Hearing Based Upon Selective Prosecution, Docket 53, filed on February 7, 2008. Attached to that reply brief is a document titled: "An Empirical Examination of the Political Profiling of Elected Officials: A Report on Selective Investigations and/or Indictments by the DOJ's U.S. Attorneys under Attorneys General Ashcroft and Gonzales," by Donald C. Shields, Professor Emeritus of the Department of Communication, University of Missouri at St. Louis. The so-called study is a fine example of Benjamin Disraeli's observation that, "There are three kinds of lies: lies, damned lies, and statistics."

Shields's study purports to show through "statistics" that the United States Department of Justice has intentionally discriminated against members of the Democratic Party in the Department's investigation and prosecution of political corruption. This so-called "study" is deeply flawed and inherently unreliable, for several reasons.

- ◆ **First**, it purports to have tabulated Justice Department "investigations", when no such information is publicly available to tabulate. Federal Grand Jury proceedings are kept secret by statute, thus the majority of investigations

that do not result in charges never become public in any way.

- ◆ **Second**, the report's main author, Donald Shields, has a substantial conflict of interest not disclosed in the study. His sister, Katheryn Shields, is a former Democratic public official under indictment for mortgage fraud. Katheryn Shields has raised claims of selective and vindictive prosecution in her own case, and submitted her brother's study to the Court in an attempt to have the fraud charges dismissed. Notably, the claim was rejected by the judge in the case. United States v. Zwego et al., 04cr0007 (W.D.Mo. 2007).
- ◆ **Third**, a prime example of the study's lack of reliability is the absence of three of the most well known and publicized prosecutions in recent years: Lewis "Scooter" Libby, David Safavian, Tony Rudy and Neil Volz. Despite the fact the study purports to have gathered a list of investigations from public media searches, these highest of high profile prosecutions were absent from the list.
- ◆ **Fourth**, there is no evidence that this study was conducted according to academic or scientific standards, or that it has been accepted by any recognized publication
- ◆ **Fifth**, a co-author of an earlier version of Professor Shields' "study," Professor John F. Cragan, has stated that he was "publicly disassociating himself" from that earlier version of the study due to flaws in its methodology. See ePluribus Media, Letter to the Editor, April 30, 2007, www.epluribusmedia.org/letters/20070430_cragan_letter. In that letter, Professor Cragan conceded that the study included public officials as targets of federal investigations solely based, in some instances, upon statements made by the public officials in the media that they would cooperate in any investigation if asked to do so.
- ◆ **Sixth**, the study intentionally excludes entire categories of public officials. It purports to examine investigations of candidates and elected public officials, but not executive branch employees, congressional staff or employees of the judiciary. Given that some of the most well known and publicized prosecutions in recent years were against executive branch employees (Libby, Safavian, Griles) and congressional staffers (Rudy, Volz, and Heaten), it is hard to imagine how any study of alleged partisan profiling would not take these prosecutions into consideration.

- ◆ **Seventh**, the search terms used by Professor Shields which attempt to gather public information were inadequate to capture even the limited amount of publicly available information. The results reflect the inadequacies: The study purportedly gathered, through its flawed research, 375 corruption "investigations and/or indictments" between January 2001 and December 2006. The Public Integrity Section's Report to Congress for the same time period reflects nearly 7,000 officials charged. The number of investigations during that time period would be much larger.

- ◆ **Eighth**, even if the 375 cases gathered were an adequate sample, the "study" does not even attempt to differentiate between investigations and indictments. The two are simply lumped together with no indication as to how many of the investigations resulted in actual indictments. Moreover, the study offers no information on the impetus for the opening of investigations, such as citizen complaints, media reports of wrong-doing, and whistleblower law suits.

For the foregoing reasons, the Court should place no weight whatsoever on any of the purported findings of Professor Shield's purported statistical "study."

Very truly yours,

CHRISTOPHER J. CHRISTIE
United States Attorney

s/Norman Gross
By: NORMAN GROSS
Assistant United States Attorney

cc: Carl D. Poplar, Esq.
Lisa Mathewson, Esq.
Attorneys for Wayne Bryant
Jeremy Frey, Esq.
Ralph Jacobs, Esq.
Attorneys for R. Michael Gallagher
All by facsimile on March 10, 2008