

Honorable Cam Ward  
Alabama State Senator  
P.O. Box 1749  
Alabaster, Alabama 35007

Dear Senator,

I have been following your work and advocacy for change in Alabama's criminal justice laws and commend you on your attempts to help balance the scales of justice. I also wish to encourage you.

First, some background on how I became a "tough on crime" advocate and how my position has changed.

In the 1980's violent crime was at an all time high. Thefts and burglaries were skyrocketing. President Reagan was toughening laws nationally, and local law enforcement icons, like Sheriff Mel Bailey, had declared that drugs were related to as much as 85% of local crime.

After my wife and I were hit head-on by a drunk driver in 1984, I came face to face with our criminal justice system as a victim. Lori was nearly killed and my family taken from me. The drunk was a twenty-one year veteran of our penal system: several felonies, multiple misdemeanors, one escape. He was stone drunk with no insurance. Before I could swear out a warrant, he had skipped town on a \$500 DUI bond. He later committed another felony in Florida, and was brought back to Alabama to face charges.

I had to work to convince the DA to bring a felony assault charge, reckless endangerment with a deadly weapon, causing serious bodily harm. It was Alabama's first conviction for assault with a motor vehicle defined as a deadly weapon.

I had planned on running for the U.S. Senate and James Carville was my consultant. After the car crash and considering my family, I ran for Attorney General. While my platform was broader than just being "tough on crime", my focus was on drunk drivers and drug dealers, whom I viewed as a danger to society, a threat to our children, and still do.

After being elected AG, I sought direction from narcotics agents, DA's, police, sheriffs and some defense lawyers. Law enforcement couldn't search after sun down. LSD, Ecstasy and angel dust were legal because our criminal statues were so out of date. A conspiracy to bring in 1,000 pounds of cocaine was a misdemeanor. Ed Carnes, now on the Eleventh Circuit Court of Appeals, and I rewrote much of the criminal code, and the legislature gladly jumped on the "tough on crime" bandwagon.

MADD and I insisted on the toughest national model to curtail drunk driving. Statutes which I believe are still justified. We were also tough on drug dealers. Victims Of Crime and Leniency supported my effort to provide more rights for Victims of Crime. I held separate hearings around the state on Victims Rights, domestic violence and sexual assault. I produced a national model for a protocol on evidence collection for sexual assaults. We designed and produced "Rape Kits" which are now receiving attention around the country for the failure of law enforcement to actually use them. All in all, we passed more anti-crime and pro-victims legislation than any other period in Alabama's history.

I served four years as Alabama's Attorney General. As Lt Governor and Governor I continued to work for victims of violent crime and to protect women and children from domestic violence. I opposed the release of every violent criminal. While I am satisfied that what we did was right for Alabama at the time, I am now convinced the time has come for some change.

I encourage you and Members of the Alabama Legislature to keep working on criminal justice reform, to give relief for taxpayers and to reduce unnecessary cost to humanity.

Because I have been busy defending myself, I may have missed some of the good work you've done, however, I wanted to delineate some areas, looking back, that trouble me today.

First, the real danger to society are recidivists. We must reverse the mandate from a "lock'em up and throw away the key" mentality, to stopping recidivism. From the day a person becomes an inmate, the focus should be on how to prevent them from returning. That means language and societal skills, math and reading, and job skills. Alabama has the best job training program in the country. There is no reason, the same principles can not be applied in prison. Preparing inmates to get and keep a job is key to reversing recidivism.

Other areas for change:

- 1.) Judicial Death Penalty Overrides, is both unconstitutional and unconscionable.
- 2.) Require and provide DNA testing in capital murder cases. Suspend all pending executions where a magistrate agrees DNA testing may make a difference in the outcome.
- 3.) "Career criminals" classification, the "three strikes" law, should be eliminated except for truly violent crimes. The definition of "Violent Crimes" needs to be re-defined. Currently, it includes breaking and entering a garage at night if the garage is attached to a home. This could send someone to prison for decades, even if the two prior felonies were minor.
- 4.) The length of sentences for drug crimes needs to be reexamined and reduced in most categories.
- 5.) Drug quantities, even in conspiracies, should be decided by the jury, not by a judge. Because the quantity will likely effect the deprivation of a citizen's liberty, such a function is given, by our constitution, to juries not judges. Too often "ghost Drugs" are assigned to a defendant by the testimony of a felon and is "cooperating" with the government to get a light sentence. The amount of drugs to be charged to each defendant should be on the "jury verdict form".
- 6.) "Drug Courts" should be encouraged. As Governor, I supported "Model Courts" such as those of former Circuit Judges Pete Johnson in Birmingham and John Butler in Mobile. Many first time drug offenders are themselves users.
- 7.) All non-violent, first offenders should be considered for a second chance through treatment, community service, fines, restitution and pre-trial diversion.

Everyone agrees that our criminal justice system should be fair. Crimes, not citizens, should be investigated.

Defendants should have the right to competent counsel. Most would agree that the government shouldn't be able to pressure, cajole or threaten people into pleading guilty, nor use tricks or entrapment, or bribe felons to give false testimony in exchange for a promise of "no time in prison". All reasonable people agree that everyone is entitled to a fair trial.

But the U.S. Solicitor General has recently argued to the U.S. Supreme Court that:

"U.S. Citizens do not have a right not to be framed." (See the Los Angeles Times, January 5th, 2010, by David Savage, Legal Correspondent)

It has now been proven that prosecutors have sent innocent citizens to prison for life or condemned them to death for crimes they didn't commit. When I was AG, Ed Carnes, helped me get Johnny Harris off death row. Judge Carnes found exculpatory evidence that was not presented at trial.

\* Law enforcement can make a deal with a felon to give false testimony in exchange for a light sentence and yet are protected from civil liability.

\* A shocking statistic, from The Equal Justice Initiative, shows that in Alabama judicial overrides, from "life in prison" to a "death" sentence, rose from 7% in 2007, a non-election year, to 30% during the elections of 2008. It could likewise be argued that judges give lengthier sentences to demonstrate they are "tough on crime". Perhaps it's a natural tendency, self-preservation since Alabama elects its judges. The Alabama Bar has for decades supported "depoliticizing" the election of judges. It's time to decide this issue.

\* Most citizens believe that if a jury finds a citizen "Not Guilty", the citizen can't receive time in prison for those charges. Not so. Judges add years of prison time to defendants's sentences for matters for which juries found them "Not Guilty". Judges routinely give additional time for prior convictions, "Relevant Conduct", even though the person has already served time for those convictions. Judges should be legislatively constrained from adding prison time for such matters.

\* A recent Washington Post editorial on March 21st, "Getting prosecutors to share what they know", discusses the benefits of a proposal by The Constitution Project. The proposal is aimed at stopping prosecutors from presenting false evidence or failing to disclose exculpatory evidence. The Post published my response, "Preventing prosecutorial misconduct". I argue that to stop prosecutors from knowingly and willfully presenting false testimony, we need to repeal the civil immunity protection afforded prosecutors and allow a lawyer representing the target or witness to be present in grand juries to object, such objections to then be decided by a magistrate, the same as in a deposition.

Most prosecutors will adamantly oppose any restriction on what they can do to get convictions. It is after all their bread and butter, how they get reelected or promoted. Holding them liable for willfully and intentionally presenting false testimony by bribing a felon with an offer of "no time in prison" will be fought just like they have fought other sensible changes such as Miranda warnings or the right to competent counsel.

One final matter: "qui pro quo bribery" in a campaign contribution setting.

The law for "run-of-the-mill bribery" is clear. If a public official takes money or has a self enrichment scheme in exchange for official action, it's a crime, pure and simple.

In a campaign contribution setting the U.S. Supreme Court in the McCormick case (1991) made it clear, or so we thought, that to cross the line from politics to crime a campaign contribution

must be swapped "explicitly" for the official action, where the terms of the agreement are asserted. Such sounds like an "express" agreement.

My trial judge, with whom I had a serious political confrontation in 2002 over his spiking the salary of an employee and thus robbing the Alabama Retirement System of some \$300,000 dollars, allowed my jury to convict, if they could imply or infer an explicit agreement. (See George Will's column in the Washington Post: "Is it bribery or just politics", enclosed.)

Judge Fuller also said that the jury could view the campaign contribution to the lottery referendum campaign as something of value to me because I supported the passage of the ballot initiative. The official action: I reappointed the donor to a board to which he had been appointed by three previous governors. There was no allegation of personal financial gain-not a penny, nor was there any self-enrichment scheme, no testimony of a quid pro quo, much less an express one.

How did I get convicted? The testimony of a "crook", as CBS 60 Minutes described the government witness. He spoke with prosecutors more than 70 times and was made to "write his proposed testimony over and over" to get his testimony the way the prosecutors wanted it. (See CBS 60 Minutes, 2/24/08, <http://www.cbsnews.com/videos/did-ex-alabama-governor-get-a-raw-deal>)

A Federal Whistleblower, a DOJ paralegal, Tamarah Grimes said she saw the:

"[Witness] being persuaded to recall something that he claimed he did not actually recollect...He repeatedly said he did not know and he was not sure. The prosecutors coaxed and pressured [the witness] to 'remember' their version of the alleged events. [The witness] appeared apprehensive and hesitant to disappoint the prosecutors."

Senator, to make clear what "bribery" is in a campaign contribution setting, perhaps consider substituting "express" for "explicit" in the McCormick definition, adding a "mens rea" element, or requiring personal financial gain or a personal self-enrichment scheme, as the U.S. Supreme Court did in its definition of "bribery" in the Skilling case (2012).

Without overloading you Senator I am enclosing a copy of the "2016 Presidential Primer on Criminal Justice Reform" which I have used to stir debate both by candidates and Congress on ways to balance the scales of justice.

I commend you for all you and other Members are doing and encourage your continuing efforts to reset our moral compass in criminal justice.

With every best wish, I am

Don E. Siegelman  
Governor of Alabama, 1999-2003  
Lt. Governor, 1995-1999  
Attorney General, 1987-1991  
Secretary of State, 1979-1987