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The Honorable Eric H. Holder Jr.
United States Attorney General
United States Department of Justice
950 Pennsylvania Avenue N.W.
Washington, D.C. 20530-0001

Dear Attorney General Holder,

We write to you on behalf of former Harrison County Circuit Judge John H. Whitfield, of Gulfport, Mississippi, who is a co-defendant along with Mr. Paul Minor in a wide-ranging prosecution initiated under former United States Attorney for the Southern District of Mississippi Dunnica Lampton. Mr. Whitfield was accused by the Government of being engaged in a scheme of bribery perpetrated by Mr. Minor.

We write to respectfully request the release of Mr. Whitfield from his confinement within the Lexington Medical Facility in Kentucky. Substantial questions of law and fact cast into question the propriety of the prosecution against him. At a minimum, Mr. Whitfield should be released pending the resolution of those questions. Because of the weight of the evidence of prosecutorial misconduct and overreaching, justice would best be served by an unconditional release of Mr. Whitfield, accompanied by the voiding of his convictions – which were only procured in a second trial with "refined" evidence and in violation of Mr. Whitfield's constitutional protections against Double Jeopardy.

First, we must give our full-throated endorsement to the June 24, 2009, letter to you authored by our colleague, Mr. Hiram Eastland, Jr., counsel to Mr. Minor. In his letter, Mr. Eastland lays out in informed and intelligent length the *Brady* failures and prosecutorial overreaching present in this case, and likened it to both the botched prosecution of former U.S. Senator Theodore "Ted" Stevens, of Alaska, and the initially successful but later overturned prosecution of Wisconsin Bureau of Procurement employee Georgia Thompson. After the Department of Justice declined to further pursue Senator Stevens, his lawyer cited this as recognition of the "extraordinary evidence of government corruption."

Former Mississippi Supreme Court Presiding Justice Oliver E. Diaz, Jr.—a co-defendant with Mr. Minor and Mr. Whitfield who was fully acquitted at the first joint trial—recently described this case at the National Press Club on June 26, 2009, as "Stevens on steroids." In this case and dozens more, it has become horrifyingly clear that the Department of Justice, under the former administration, concocted and conducted outright political prosecutions.

Mr. Lampton actually said to Mr. Whitfield and his previous counsel before the first indictment was returned, "[y]ou wouldn't be a target of this investigation if it wasn't for your politics." This statement, combined with the curious removal of Mr. Lampton's name from the second list of U.S. Attorneys slated for firing by the Bush Justice Department, raise serious questions as to the propriety of Mr. Whitfield's prosecution from its inception.

Even in cases where the prosecution does not seem to have been politically-triggered—such as Senator Stevens' case—the work of the Public Integrity Section has been so blatant in its overreaching that the federal judiciary has been moved to condemnation, with the trial judge in that case decrying the "shocking and disturbing" prosecution, terming it the worst "mishandling and misconduct" he had seen from his career on the Bench.

The Seventh Circuit was actually moved to call for Legislative correction, as it held in reversing the conviction of Georgia Thompson:

> This prosecution, which led to the conviction and imprisonment of a civil servant for conduct that, as far as this record shows, was designed to pursue the public interest as the employee understood it, may well induce Congress to take another look at the wisdom of enacting ambulatory criminal prohibitions. Haziness designed to avoid loopholes through which bad persons can wriggle can impose high costs on people the statute was not designed to catch.

U.S. v. Thompson, 484 F.3d 877, 884 (7th Cir. 2007).

We believe the prosecution of Mr. Whitfield has been equally shocking. As described more fully in Mr. Eastland's letter to you, the prosecution of Mr. Whitfield has been built upon a foundation of allegations of bribery without proof of *quid pro quo* benefits. When the first trial ended without a conviction, the government simply re-booted their case, tweaking the evidence and the testimony to re-try Mr. Whitfield under the exact same factual and legal theories which one jury had already rejected. With the relaxation of necessary proof and the ability to disregard Double Jeopardy, prosecutors should be expected to increase the number of their convictions. Such practices do not, however, advance the cause of justice.

We know that you and the Department of Justice are well-informed of these issues, and have been struggling with how to scour the barnacles from your ship. We fervently believe that our client is also a victim of the Public Integrity Section. At the time of John Whitfield's indictment, he was the managing partner in a large regional defense firm. Prior to his return to private practice, Mr. Whitfield was elected to two terms as a Circuit Judge over Harrison, Hancock, and Stone Counties in Mississippi. A circuit judge is the highest trial court position in Mississippi, and Mr. Whitfield was honored to have been elected to such a position by overwhelming support in the Gulf Coast communities. In a state where we still grapple mightily with the injustices of the past, Mr. Whitfield—an African-American—was elected by an area that was over 80% white.

In his time on the Bench, he disposed of an amazing 12,000 cases, all while juggling active memberships in the Federalist Society, of which he was a director; serving as President of

the Russell-Blass-Walker Chapter of the American Inns of Court; and presenting dozens of speeches and seminars regarding the intricacies of law. Of the legion of awards and honors presented to him over the years, Mr. Whitfield was celebrated multiple times by the Biloxi Branch of the NAACP, and treasured a community service award given by the Gulf Coast Women's Center for Nonviolence.

Mr. Whitfield is justifiably proud of his six children, one of whom, Gregory Whitfield, currently plays third base for Southern University in Baton Rouge, Louisiana. The Jaguars made it to the NCAA tournament this year. Mr. Whitfield has never seen his son play a baseball game in college.

This is because Mr. Whitfield has been languishing in a federal medical facility since he reported to Lexington in December of 2007 following his conviction. Mr. Whitfield began in August of 2008 to seek judicial relief, *pro se*[1], from the Fifth Circuit from his confinement under the auspices of the 1984 Bail Reform Act, which allows a defendant on appeal to seek bond when there are substantial questions of law or fact which would reduce or alleviate his sentence. The Fifth Circuit directed him to first seek relief with the District Court.

As directed by the Fifth Circuit, in January of this year, he filed *pro se* another motion to be released pending his appeal with the District Court. After seven months the District Court ruled, on Monday, July 13, 2009.[2] While finding that there was no evidence that his appeal was frivolous or that he was a flight risk, the trial court denied the motion for release.

The Government has admitted in previous pleadings that Mr. Whitfield is neither a danger to society nor a flight risk. In fact during the pendency of his prosecution, Mr. Whitfield was allowed to travel out of the country for a family vacation. The Fifth Circuit has twice ordered supplemental briefing in his case, once for an examination of whether the required jurisdictional elements of Section 666 were present to support prosecution and to examine the Supreme Court's recent ruling concerning the Double Jeopardy protections of the United States Constitution. Yet Mr. Whitfield still languishes in Kentucky, hundreds of miles away from his family. Attorneys for the Government have indicated they will oppose his motion currently before the Fifth Circuit for review of the District Court's ruling and for release pending his appeal.

We tell this to go beyond our lawyer's talk of *Brady* violations and honest services statutes and *quid pro quo* and to put a human face on the victims of the corruption of the Department of Justice and the Public Integrity Section under the previous administration— to put a human face on *this* victim of a baseless, legally void political prosecution.

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[1] Mr. Whitfield proceeded *pro se* on his appeal after his former counsel of six years was unable to continue to represent him.

[2] In the seven months his motion seeking release was pending in the District Court, the Fifth Circuit heard oral argument on his appeal. Mr. Whitfield as a *pro se* defendant/appellant was unable to participate in this hearing in any way due to his confinement, substantially limiting his ability to present his defense.

You recently stated in your speech to the National Black Prosecutors Association with respect to Mr. Steven's prosecution, "[w]hen we are wrong we will admit our mistakes." The Government's prosecution of Mr. Whitfield is fraught with similar mistakes. Accordingly, we respectfully request that you order the immediate release of John H. Whitfield, and order that all charges against him be immediately dropped, void as if they never existed. In the alternative, we respectfully request that you order Mr. Whitfield's release pending the Fifth Circuit's review of his case.

We all know that the system was broken. You have the power and ability to fix it at your command.

With all sincerity and respect,

Drew McLemore Martin
Martin Law Firm, PLLC

David Neil McCarty
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cc: Lanny A. Breuer
Assistant Attorney General
Criminal Division
U.S. Department of Justice

Kevin Ohlson
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John H. Whitfield