

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
Northern Division

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.) CR. NO. 2:10cr186-MHT-001.
)
MILTON E. McGREGOR, et al.,)
)
 Defendants.)

MOTION FOR ORDER REQUIRING DISCLOSURES REGARDING
“RECUSAL” OF OFFICE OF UNITED STATES ATTORNEY

Defendant Milton McGregor respectfully moves for an order requiring the prosecutors to disclose (a) all reasons for the “recusal” (i.e., the alleged non-involvement, whether termed a “recusal” or otherwise) of the Office of the United States Attorney for the Middle District of Alabama; (b) all steps taken to ensure that such “recusal” is and has been firmly enforced; and (c) any explanation as to how and why two Assistant United States Attorneys in said Office are not recused even while the remainder of the Office is recused.

At an October 4, 2010, press conference announcing the indictment in this case, Assistant Attorney General Lanny Breuer declared that the “Office” of the United States Attorney for this district was “recused” from this matter. His comment was careful and precise, as a statement not of recusal of just the United States Attorney herself, but of the “Office.” Yet, two Assistant United States Attorneys from this Office, Mr. Franklin and

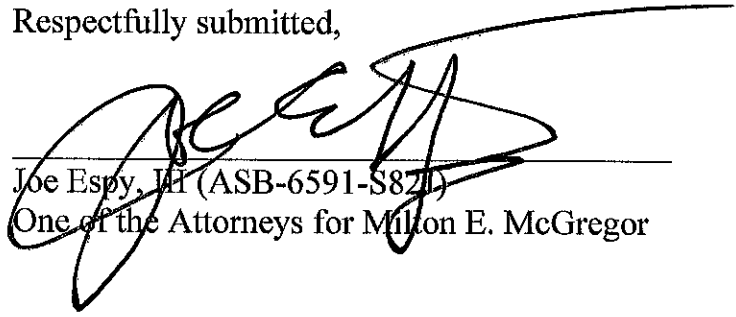
Mr. Feaga, are undisputedly (and have undisputedly been) heavily involved in the case.

The courts, as well as the Department of Justice's internal procedures, recognize that there are situations in which not only is the United States Attorney personally recused from a given matter, but where – beyond that – that official's "Office" as a whole is recused. In those situations, prosecutors from outside the recused "Office" are designated to handle the matter in question. *See, e.g., In the Matter of the Special September 1978 Grand Jury*, 590 F.2d 245 (7th Cir. 1979); *U.S. v. Weyhrauch*, 544 F.3d 969 (9th Cir. 2008); United States Attorneys' Manual, Section 3-2.170.

But it is impossible (or at least nearly so) to imagine any set of reasons that would cause and justify the recusal of an entire United States Attorney's Office, *except for* two particular Assistant United States Attorneys in that Office. On its face, such an Office-wide-with-exceptions recusal makes little sense.

McGregor respectfully submits that this situation deserves scrutiny by the Court. By inquiring into this paradoxical situation, the Court can help to ensure that the investigation leading up to this case, and the prosecution of this case, are not affected by extraneous interests that have no legitimate part in prosecutorial decisionmaking. Because an unbiased prosecutor is a component of due process, *see, e.g., Crowe v. Smith*, 151 F.3d 217, 228 (5th Cir. 1998), McGregor respectfully submits that inquiry into this matter is in fact required by the Fifth Amendment.

Respectfully submitted,



Joe Espy, III (ASB-6591-S821)
One of the Attorneys for Milton E. McGregor

OF COUNSEL:

Benjamin J. Espy (ASB-0699-A64E)
William M. Espy (ASB-0707-A41E)
MELTON, ESPY & WILLIAMS, P.C.
P.O. Drawer 5130
Montgomery, AL 36103
Telephone: 334-263-6621
Facsimile: 334-263-7252
jespy@mewlegal.com
bespy@mewlegal.com
wespy@mewlegal.com

Fred D. Gray (ASB-1727-R63F)
Walter E. McGowan (ASB-8611-N27W)
GRAY, LANGFORD, SAPP
McGOWAN, GRAY, GRAY
& NATHANSON, P.C.
P.O. Box 830239
Tuskegee, AL 36083-0239
Telephone: 334-727-4830
Fax: 334-727-5877
fgray@glsmgn.com
wem@glsmgn.com

Robert D. Segall (ASB-7354-E68R)
David Martin (ASB-7387-A54J)
Shannon Holliday (ASB-5440-Y77S)
COPELAND, FRANCO, SCREWS & GILL, P.A.
P.O. Box 347
Montgomery, Alabama 36101-0347
Telephone: 334-834-1180
Fax: 334-834-3172
segall@copelandfranco.com
martin@copelandfranco.com
holliday@copelandfranco.com

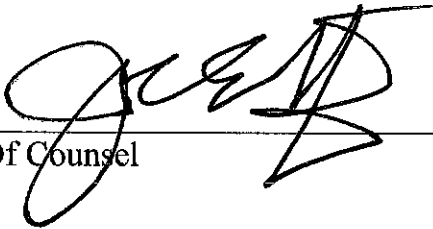
Sam Heldman (ASB 3794 N60S)
THE GARDNER FIRM, P.C.
2805 31st Street NW
Washington, DC 20008
Telephone: (202) 965-8884
Fax: (202) 318-2445
sam@heldman.net

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following electronically and via regular mail, postage prepaid and properly addressed on this the 5 day of October, 2010.

Peter Ainsworth
US Department of Justice
Public Integrity Section
1400 New York Avenue, NW
Washington, DC 20005
Peter.ainsworth@usdoj.gov

Peter Ainsworth
Louis Franklin
Steve Feaga
Federal Bureau of Investigation
One Commerce Street, Suite 500
Montgomery, AL 36101
Steve.Feaga@usdoj.gov
louis.franklin@usdoj.gov



Of Counsel