

United States v. Richard M. Scrusby
2:05-CR-119-MEF
EXHIBIT V-E

Declaration of Luther Stancel Pate, IV
Under Penalty of Perjury
Pursuant to 28 U.S.C. § 1746

I, Luther Stancel Pate, IV, declare and state as follows:

1. I am over eighteen years of age and of sound mind.
2. I make this Declaration of my own free will, and I have neither been threatened nor offered any inducement to make the statements below.
3. I have personal knowledge of the facts set forth below.
4. I have known Nick Bailey since approximately 1994, when I met him during Don Siegelman's campaign for Lieutenant Governor.
5. At some point after the government's investigation of him began, Nick visited my office and told me that he no longer worked for Governor Siegelman (Spring 2002). I had had very little conversation with Nick between 1994 and that time.
6. The day in 2002 Nick visited my office he told me he thought he was in trouble with the law. He did not tell me any of the details of his problem at the time. I asked Nick how he was supporting himself and if he needed a job. He told me that it would be damaging for me to be associated with him. I told him I would decide on that. It was obvious to me that he was a man in trouble with heavy burdens. I believe in giving people second chances, so to help Nick stabilize at least one part of his life, I offered him employment on a project in New York City related to helping individuals with mental health issues related to 9/11.
7. I made very clear to Nick that I did not condone what I had read in the newspaper; that I would not condone any breaking or bending of any laws or rules

295
6/29/07

whatsoever; that I was not passing judgment on him; that I would expect him to meet his challenges "head on" – including cooperating fully with the government and accepting responsibility for his actions; and that I would not allow anyone to mistreat him as long as he was acting appropriately. Nick told me his situation was at a crisis and that the outcome was coming quickly. When I first hired Nick, I thought the time before a resolution of the issue would be two to four months. Nick has worked for me since that time (except for the period of his incarceration), and he still works for me today.

8. I have had many conversations with Nick about the circumstances of his cooperation with the prosecutors and the agents. These conversations took place both during the time of his cooperation and afterwards up through the present day. Some of the conversations took place with Nick at the federal prison in Atlanta; I visited with Nick in prison almost every two weeks.
9. As his employer throughout the time he was a cooperating witness for the government, I believe I was aware each and every time Nick was cooperating with the government during business hours. Nick's office adjoined mine and we shared a common interior door, so I was aware of his comings and goings. The number of times he was away from the office or on the phone with investigators and prosecutors became a burden on the company and on Nick. I observed that he had trouble sleeping (and needed to take prescription medicine to sleep), and was often distracted, anxiety-ridden, interrupted, and inconsistent in his schedule. In addition to being required to leave work to meet with prosecutors and investigators, Nick was always available to them on an on-call basis. The

JG
6/29/09

prosecutors and investigators often called him on his cellular phone, including often when he was at work. The calls were both specific questions about what Nick knew about particular events or were to raise topics for him to think about and consider for discussion at the next meeting. Nick was required to meet with different representatives of the government, and to meet with them at different locations, a lack consistency and predictability that added to his and the company's burden. These constant interactions kept Nick on an emotional roller coaster. I provided transportation and expenses for travel to these meetings, as well as significant time off from work with pay.

10. Nick felt unsafe for his physical person. Nick feared that he was watched. He was very concerned about some of the individuals that he was assisting the government with, or was believed to be assisting with, physically harming him. This was a constant and major concern. To help protect him, I arranged for Nick to swap the automobiles he was using and provided some alternative places for him to stay. At the government's suggestion, he tried to avoid habits of coming and going. They told him he should "avoid routine." Like most human beings, being unable to establish a routine only contributed to his anxiety.

11. According my personal observations and to Nick, the government used both "carrot-and-stick" techniques to convince him to provide more and more cooperation in the various prosecutions in which he was required to participate. The "carrot" was performance-based: the better Nick's performance, the less time in his sentence. Nick expressed to me many times I have to give them "what they want." Nick said they continuously encouraged him to cooperate with the

285
6/20/09

promised of a lighter sentence, a "downward departure." They used the scheduling and the postponement of his sentencing to keep him in line which only added to his psychological burden. Time after time, Nick's sentencing would be scheduled and suddenly postponed just a day or two beforehand. After they "walked him to the gallows," the government would again offer again the carrot of a light sentence to encourage more and more cooperation.

12. The "stick" that the government used with Nick was to threaten, expressly or implicitly, actions that would profoundly affect his personal life. I particularly remember that Nick was visibly shaken by a call he received at the office one day when I was present in which he was called by one of the prosecutors working on the Bobo prosecution (Nick said, at that time and since, that it was Matt Hart). Nick was told that the government was working to prevent the publicizing of an alleged sexual relationship between Nick and Don Siegelman. Nick also told me that one of the agents working the Siegelman/Scrushy prosecution asked him whether he had ever taken illegal drugs with Governor Siegelman or had a sexual relationship with him. These comments had a dramatic effect on Nick and, in my observation, added significantly to the pressure he felt to go along with whatever the prosecutors wanted him to say.
13. Nick was so frightened during this period that he was even worried that the government would retaliate against him after the government was unable to win a conviction against Senator Roger Bedford, a man Nick likes and admires but against whom Nick was required to testify. Nick told me immediately after the trial that he was concerned that he would be held accountable for the fact that the

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6/24/09

government was not successful in getting a conviction. Nick also told me that his lawyer, George Beck of the firm Capell & Howard in Montgomery, told him that he should go along with the prosecutors as far as he could.

14. According to Nick, Steve Feaga eventually took over the investigation in which Nick was involved, and the entire process started over. According to Nick, he was called to a meeting with agents and/or prosecutors who wanted him to “tell us all you know about any matters involving Richard Scrushy and/or Don Siegelman.” He told me this was the first time the government had shown him a significant interest in Scrushy. According to Nick, the government told him of no potentially criminal activity; rather, he told me the government appeared to be looking for a crime rather than investigating an alleged crime.
15. The government’s requirements of Nick and the approach they used had a profound effect on Nick. I watched him sit in his office day after day, like a student trying to become a teacher’s pet, trying to think of things or people that might interest the government in hopes that doing so would help him avoid a prison sentence. But there was a balancing element in Nick’s approach. He made it clear to me that he was trying to give the government what he thought would be valuable targets and information and thereby protect his friends and family as well as reduce his own punishment.
16. Nick has also spoken to me from time to time about how the agents and prosecutors would convince him gradually to modify his testimony. For instance, when Nick would tell them what he knew in his own words, they would ask “wouldn’t it be all the same if you just said it this way.” Nick remembers one

JFW
6/29/09

example of this particularly well, and that involves the term “absolute agreement.” Nick said to me, “I don’t use that word that way or they convinced him to say it was an absolute agreement.” Nick told me that he doesn’t use that phrase in his everyday speech, but he learned to use it after practicing his testimony over and over in the way the prosecutors wanted him to say it. His original characterization was that “I thought there was an understanding.” Nick told me that Louis Franklin was particularly relentless in trying to get him to answer questions the way he wanted him to, to the point that Nick eventually refused to deal with Franklin any more and would only talk to Steve Feaga.

17. Nick has described in great detail the method by which the prosecution coached him to testify at trial in order to keep his answers consistent. Nick said the prosecutors would ask him questions; he would give his answer. At first, Nick spoke the answers. The prosecutors became frustrated that his answers were inconsistent with previous ones. Nick remembers some members of the prosecution team recording his answers on their laptops. Unable to achieve the desired consistency with spoken answers, the prosecutors shifted to a written method. Written versions of the answers were produced; Nick would be asked the same questions again and his answers would be compared to the written ones. This also did not work because Nick still was unable to give consistent answers that satisfied the prosecutors. They then asked Nick to write down the answers. Nick said he did that, and that his notes were kept in a 3-ring binder.
18. Nick first told me about his 3-ring binder on one occasion when I visited him in prison. I asked him if I could see it, and he told me he must have given it to his

957
6/24/09

attorney, George Beck. Nick then provided me with a handwritten note, a copy of which I have attached to this declaration as Exhibit 1, authorizing Mr. Beck to allow me to review the notebook, but instructing him to “redact” his (Nick’s) handwritten notes from it. I made two trips from Tuscaloosa to the offices of Capell & Howard, Mr. Beck’s law firm in Montgomery. Each time I went without an appointment so that no one would be “tipped off” about my pending request. I was allowed to see a binder on the second visit, but the binder I saw had no handwritten notes in it. When I reported this to Nick, he told me that he thought the binder to which he had referred might be in the basement of his house and that he would have someone check on it. I know that this notebook has recently been located.

19. Based on my discussion with Nick, I have no doubt that the pressure, persuasion, and rehearsals to which Nick was exposed by the agents and prosecutors had a significant effect on the testimony he gave at the trials in which he testified, including the Siegelman/Scrushy trial. A week ago, Nick told me that he had just reread his testimony in the Siegelman/Scrushy trial and said, “I can’t even believe I said those things.” This comment stimulated yet another conversation between me and Nick about the testimony the government negotiated with him.
20. It is my habit to carry an index card in my pocket, one for each day, and to take important notes and appointments on these cards. I made notes of some of my conversations with Nick when he was in prison regarding the Siegelman/Scrushy case. I took these notes while I was speaking with Nick (his words), not at some later point.

JSN
6/29/09

21. I am attaching to this declaration true and accurate copies of some of the notes I took during my conversations with Nick. I have marked them as Exhibits 2 through 5.

22. As I reviewed my notes, I remembered distinctly talking with Nick about the following subjects that are mentioned in my notes:

a. Exhibit 2 relates to a conversation I had with Nick in which he mentioned that, during his interviews with the government, there were "lots of people typing on lap tops," especially Julie Weller, who was constantly taking notes on her laptop. As shown in my note, this was notable to Nick because her husband, Chris Weller, was a partner in Capell & Howard (George Beck's law firm, also), which represented Bill Pryor and Bill Canary. This was important because Bill Pryor, as Attorney General, had begun the investigation into Siegelman and his administration, and Bill Canary is married to U.S. Attorney Leura Canary whose office was running this prosecution.

b. Exhibit 3 is a note I made, as it indicates, during a visit with Nick in prison on November 18, 2007. This was one of the conversations in which he expressed, as the note says, how afraid he was of Leura Canary and Louis Franklin, even after he was in prison, because he had seen how other prisoners had had contraband planted on them and otherwise been "set up" for infractions that would increase their prison terms or land them in the "hole" – solitary confinement. The

25
6/29/09

note also reflects the fact that Nick was afraid of Leura Canary and Franklin because there was “nobody accountable.” In other words, they did what they wanted and answered to no one.

c. Exhibit 4 relates to the 3-ring binder that I described above in paragraphs 17 and 18. As noted there, Nick told me that he thought the binder was “returned to George,” meaning George Beck. This discussion is what caused me to get the note from Nick, that I discussed in paragraph 18, authorizing Mr. Beck to let me review the binder.

d. Exhibit 5 concerns a conversation with Nick that I remember vividly. He told me that, once when he was driving home to Birmingham from a long difficult interview with the government in Montgomery, he “became uncomfortable,” because he thought he had “taken too far” what he had told the government about Siegelman and Scrushy, and the IHG check based on his “sketchy recollection.” As the note shows, Nick first called George Beck and then called Keith Baker to express his concerns about the accuracy of his own testimony. As my note also shows, Agent Baker told him “don’t worry – do [your] best,” and that he (Baker) would check out the facts.

19. Based on many, many conversations with Nick over the past 8 years, I have no doubt that he was both intimidated and manipulated by the government into giving testimony at the Siegelman/Scrushy trial that Nick wasn’t sure was true. Nick said as much himself in

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4/29/09

our recent conversation when he said he "can't believe" what he said in his own testimony. Nick continues to live in absolute fear of what could happen to him should the prosecutors get upset with him directly or indirectly based on, for instance, the disclosures memorialized in my contemporaneous notes and this declaration.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.



Luther S. Pate, IV

Executed on June 23, 2009

25
6/20/09

GEORGE BECK,

Please ~~show~~
STAN PATE TO
REVIEW AND

Have a copy of
the three ring binder
of trial preparation
materials. I authorize
1/12/08 ~~1/13/08~~ 12:25 pm

GEORGE
Any copies
should have my
hand written notes
redacted. ~~1/13/08~~
1/12/08 12:25 pm

Had all 302's

All Q+A final

Lots of people
typing on laptop

Julie Walker

↓
Husband -

Chris Wells

George Penter +

Bill Pycard

Bill Conway Attorney

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Kenneth Seibert
Release Date October 19
2007