

United States v. Richard M. Scrushy
2:05-CR-119-MEF
EXHIBIT V-G

**Declaration of P. David Richardson Under Penalty of Perjury
Pursuant to 28 U.S.C. § 1746**

I, P. David Richardson, declare and state as follows:

1. I am Vice Chairman and CEO of Investigative Group International, Inc. ("IGI"), a long-established and pre-eminent corporate, financial and litigation support investigative agency headquartered in Washington, D.C.
2. IGI was retained in April 2009 by counsel for the defense in the case of *United States vs. Don E. Siegelman and Richard M. Scrushy*, to investigate facts relating to that case.
3. One of our primary assignments was to investigate the facts surrounding the dealings of government prosecutors and investigators with Nick Bailey, the government's key witness in the Siegelman/Scrushy trial, during the period when he was a cooperating witness. This course of dealing with Mr. Bailey extended for nearly five years and, by his own account, included approximately 70 interviews or other communications with government representatives. The reason for the focus on Mr. Bailey is that he was the key witness as to the government's case that Richard Scrushy "bribed" Governor Don Siegelman in order to be appointed to the Alabama Certificate of Need ("CON") Board.
4. On June 5, 2009, Terry Lenzner (Chairman of IGI) and I met for approximately 5 to 6 hours with Mr. Bailey and his attorney, George L. Beck, Jr., at the offices of Capell & Howard, P.C., which is Mr. Beck's law firm in Montgomery, Alabama. On June 15, 2009, we spent an additional 4 or more hours with Mr. Bailey, with Mr. Beck and I present in person with Mr. Bailey at the Capell & Howard offices

and Mr. Lenzner participating by telephone. Mr. Lenzner and I also spoke briefly with Mr. Bailey at the offices of his employer, Pate Holdings, Inc., on June 4, 2009.

5. At our meeting on June 5, George Beck reviewed with us contemporaneous records he had made of meetings and interviews with government agents and prosecutors that he had attended with Mr. Bailey. Based on his records, Mr. Beck provided the dates of these meetings and interviews, the names of the persons attending, and the subjects that were discussed. Having reviewed the records, Mr. Bailey has attested to the accuracy of this information in a notarized Declaration Under Penalty of Perjury that he signed on June 20, 2009.
6. In addition, Mr. Bailey provided us, in Mr. Beck's presence, with numerous details of his meetings with the government and described the pressure that was applied to him to conform his testimony to the answers the government wanted him to give at trial. These tactics resulted in Mr. Bailey giving testimony at trial that had been shaped by the government so as to allow the jury to draw inferences that were actually contrary to Bailey's own beliefs.
7. As notable examples of this approach, Mr. Bailey told us that he did not believe that Governor Siegelman had been bribed by Mr. Scrushy; that he did not believe the Governor had made a commitment to Mr. Scrushy to appoint him to the CON Board in return for his contribution to the Alabama Educational Lottery Fund; and that he did not believe that Governor Siegelman worried even for an instant that he would ever have to repay out of his own pocket the loan he had personally guaranteed – which was allegedly the personal benefit that the Governor got as a

result of Mr. Scrushy's contributions to the Educational Lottery Fund. Yet, based on Mr. Bailey's testimony as molded by the government, the jury found Governor Siegelman and Mr. Scrushy guilty of bribery.

8. Mr. Bailey also described to us how the government representatives gradually persuaded him, over the course of many meetings and interviews over a period of nearly five years, to adopt and testify to the answers they wanted. For example, Mr. Bailey told us that one government tactic was to show him, when he arrived at these meetings, a typed summary of what he had purportedly said at a previous meeting with the government or to remind him in some other fashion of his prior testimony. Mr. Bailey also told us that, if he disagreed that he had said exactly what was in the document, there would be discussions that sometimes extended over more than one meeting. Ultimately, Bailey told us, he and the government would agree as to whether any changes would be made so that he could adopt as his own the language of the summary. As Mr. Bailey states in his own Declaration, someone from the government side always took notes at these and other meetings with the government.
9. Mr. Bailey further informed us that it was common, in the course of discussing the language he would finally adopt, for the government representatives to make arguments that, instead of using a word he would normally use, they would tell him, "wouldn't it be just the same" if he used the words that the government wanted him to use. One example he clearly recalled was the term "absolute agreement." Bailey said that was not a term he would normally use – that he might have said "understanding," instead – and that he didn't understand at the

time why they were so determined to get him to use those words. Nonetheless, Bailey recalled that he was schooled repeatedly on the use of that term, and anytime he talked about an arrangement or understanding with, for example, Lanny Young, the government representatives would say, "Was there an agreement," and he would say, "yes." Then they would ask him, "Wouldn't it be the same if you said 'absolute agreement'?", and he eventually learned to use the words they wanted him to use. Similarly, Bailey said that the prosecutors also told him sometimes that his testimony was in conflict with what other witnesses had said or the words they had used to say it – without telling him who these other witnesses were – to persuade him to adopt another witness's view.

10. Bailey also distinctly recalled, and has told others about, an incident when, after leaving a meeting with the prosecutors at George Beck's office in Montgomery, he became uncomfortable on the drive back to Birmingham about what he had said about seeing a check signed by Richard Scrushy that Governor Siegelman had in his hand after meeting with Scrushy in his office. Bailey's uncertainty concerned when he had first seen a check for \$250,000 and he told us that there had been so much discussion about that meeting during his government interviews that it challenged his memory, so that, for example, he couldn't even be sure that the people whom he had previously said were there were, actually, there that day. Bailey told us that, in follow-up meetings, the prosecutors began to tell him that the check he saw may not have been cut until after the meeting between Governor Siegelman and Scrushy at the Governor's office. He also recalled various explanations that the prosecutors suggested to him, including a

theory that Scrushy had driven down from Birmingham “secretly” before the meeting and gave Siegelman a check that was post-dated. Bailey told us that he thought that theory was far-fetched. I have never seen any reference to this exchange in any 302.

11. As the list of meetings in Mr. Bailey’s Declaration shows, sometimes there would be a gap of weeks or even months between his meetings with government agents. He told us that the prosecutors would express their frustration if he forgot from time to time exactly how he was supposed to answer their questions. He remembers clearly that Assistant U.S. Attorney Steve Feaga told him, “We’ve got to get some consistency. When we ask you a question, you’ve got to answer the same way every time.” Mr. Feaga also told him, “You know what the questions are. Write down the answers and stick with the answers.” The government’s frustration with Mr. Bailey’s forgetfulness is not mentioned in any 302 that I have seen, nor is Mr. Feaga’s instruction to him to write down his answers so as to answer the same way every time.
12. Mr. Bailey said that, following Mr. Feaga’s direction and to prevent the prosecutors from becoming irritated, he began to make notes so as to remember the key words they wanted him to use, and to study and memorize the right answers and words before his next meeting with the government. Bailey is confident that the government was aware of this practice.
13. The government later provided him with a 3-ring binder containing copies of his 302 statements and Grand Jury testimony, to prepare for the trial. Mr. Bailey told us that he inserted the notes he had made about his testimony into this 3-ring

binder, added other notes as he made them, and made handwritten notes of his own in the margins of the 302s and testimony transcripts that were in the binder. Mr. Bailey recalls that, while he was in prison, he had provided his employer, Stan Pate, with a handwritten note to George Beck authorizing Beck to allow Pate to review the binder, but instructing Beck that "any copies should have my handwritten notes redacted." As Mr. Pate has told us and as stated in his own Declaration, he visited the offices of Capell & Howard twice before being able to see any binder. The binder Mr. Beck ultimately provided to him contained no handwritten notes.

14. At a meeting at Mr. Beck's offices on June 15, 2009 that I attended in person and that Terry Lenzner participated in by telephone, Mr. Bailey came into the conference room where we were meeting with his 3-ring binder. Mr. Beck would not permit me to review the contents of the binder as he went through it across the table from me. It is a 2" or 2 ½" white vinyl or plastic 3-ring binder, with a clear plastic pocket on the inside of the front cover. There are 21 (by Mr. Beck's count) sheets of ruled notebook paper, some white and some yellow, in that pocket, all with handwriting (which Mr. Bailey recognized as his own) on one side, and two of which have handwriting on the reverse side as well. There is also a 9 ¾" x 7 ½" Mead composition book with a "marbleized" black and white cover; a number of pages have been torn out of it, and some or all of them slipped back in. I could observe handwriting on all of those. There are also several 3" x 5" sheets of notepaper with handwriting on them. This binder also contained what appeared to be copies of the 302s and grand jury testimony, with tabbed

divider sheets that had handwritten labels on the tabs. There were numerous yellow "Post-it" notes visible on these pages, and at least some of the pages of 302s and transcripts appeared to have handwritten annotations on them.

15. Mr. Beck also described a notable document that was either in or with the binder: it is a 2-page document he described as pages 5 and 6 of a 6-page facsimile. Mr. Beck recognized this to be typewritten questions that the government had forwarded to Mr. Bailey through him. On the second page there were handwritten answers to some of the questions; Mr. Bailey and Mr. Beck both said that the handwriting was not theirs.
16. Mr. Bailey also informed me that, in his review of the binder, he had noticed a page from a 302, which he recalled as being the 302 dated June 30, 2003, on which he had handwritten the word "bullshit."
17. As noted above, Mr. Beck declined to allow me to read any portion of the contents of the binder, pending his review of it. On Saturday, June 20, Mr. Beck forwarded to me 39 pages of documents. The documents described in paragraphs 15 and 16, above, were not included. He has also withheld 23 additional documents, evidently on the theory that handwritten notes made by Mr. Bailey at some point prior to July 2006 are somehow subject to a "seal" order covering a document Mr. Beck filed at the time of Bailey's sentencing. Mr. Beck apparently also has withheld 4 pages of documents described as "notes by Nick," claiming attorney work product for those documents. The description makes clear that these notes are Mr. Bailey's work product, and he is not an attorney.

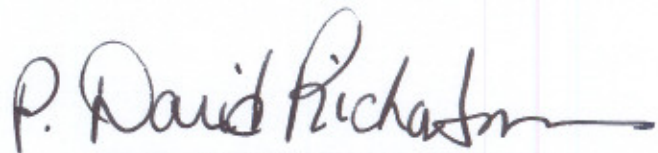
18. Mr. Bailey recalls that, on a number of occasions, prosecutors and agents asked him questions or made statements that he came to realize were implied threats to disclose potentially embarrassing details about his personal life or to intensify investigations of his friends and relations. These included Matt Hart telling him before his testimony at the third Bobo trial that he had heard a rumor that he was involved in an inappropriate relationship with another state government official, and that allegations to that effect could come out during the trial. Similarly, Mr. Bailey told us that Bill Long of the Alabama AGs office asked Mr. Bailey at a meeting at Maxwell AFB, immediately before an interview with the government, whether he had a sexual relationship with at least three other people who were also under investigation by the government. Mr. Bailey also told us that he was acutely aware of and worried about the fact that his brother, Shane, was under investigation by the government. Bailey said that Bill Long told him that Shane was “ok – for now,” and that he understood the implicit threat in the “for now” qualification.
19. Mr. Bailey also explained to us some of the theories advanced by the prosecutors that he could not go along with. For example, he remembers the prosecutors and agents suggesting repeatedly to him that Governor Siegelman’s motive for soliciting contributions to the Alabama Educational Lottery Fund from Richard Scrushy was that the Governor had personally guaranteed a loan to the Fund – in other words, that the contributions to retire the AELF’s debt would benefit Don Siegelman personally. Bailey told us that he did not believe that Don Siegelman

worried even for an instant that he would ever have to pay back any of that debt out of his own pocket, and that he told one of the investigators his view on that.

20. Mr. Bailey also recalls one occasion on which he was asked by Steve Feaga to come to an interview and “tell us all you know about Richard Scrushy,” particularly concerning any contributions he made to the lottery fund. He believes that this was at about the same time as when Scrushy was acquitted in the fraud trial in the Northern District of Alabama.

21. In my view, this “tell us all you know about” a particular individual is part of the government’s “fishing expedition” approach to this investigation in which they were determined to find some kind of wrongdoing by Governor Siegelman and Richard Scrushy. Mr. Bailey recounted other examples of this same approach. He was asked, for example, to provide or confirm information about such allegations as using illegal drugs with Governor Siegelman; secret car trips by Mr. Scrushy, supposedly driving by himself from Birmingham to Montgomery to deliver checks to the Governor so no one would know about it; involvement by Governor Siegelman, himself and others in “insider trading” deals; and the supposedly improper transfer of Alabama Democratic Party funds to an account in Boston by Trava Williams.

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


P. David Richardson

Executed on June 23, 2009