



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

Analysis of Disclosures, Agency Investigation and Reports, Whistleblower Comments and Comments of the Associate Special Counsel

Summary—OSC File No. DI-08-0715

The whistleblower, Tamarah Grimes, a paralegal at the United States Attorney's Office for the Middle District of Alabama (USAO-MDAL), alleged that management officials violated a law, rule, or regulation when they failed to report improper communication with the jury during the prosecution of former Governor of Alabama Don Siegelman and former Chief Executive Officer of HealthSouth Richard Scrushy (*Siegelman* case).¹ Ms. Grimes further alleged that USAO-MDAL officials caused the government to incur unnecessary salary, per diem, and travel expenses for a contract employee for approximately 5 years, constituting gross mismanagement and a gross waste of funds. Ms. Grimes disclosed that victim impact funds were used to pay a portion of the contract employee's transportation and per diem expenses so he could attend the defendants' sentencing. She alleged that United States Attorney (USA) Leura Canary abused her authority by obstructing an Office of Professional Responsibility (OPR) investigation into the conduct of an Assistant United States Attorney (AUSA) employed by USAO-MDAL. Finally, Ms. Grimes reported that after she disclosed the allegations of possible misconduct and violation of law, rule or regulation to the Department of Justice (DOJ), Office of Inspector General (OIG), and filed an EEO complaint, USAO-MDAL officials initiated a DOJ OIG criminal investigation into her conduct.

The Office of Special Counsel (OSC) referred Ms. Grimes' allegations to then-Attorney General Michael B. Mukasey for investigation. The Attorney General delegated authority for the investigation and report to Associate Deputy Attorney General David Margolis. The investigation did not substantiate the allegations.

After DOJ conducted its investigation and issued its report, the Chairman of the United States House Committee on the Judiciary and the Chair of the House Subcommittee on Commercial and Administrative Law requested additional investigation into Ms. Grimes' allegations of improper contact with the jury. The subsequent investigation confirmed DOJ's initial investigative findings that no improper communication with the jury occurred. DOJ provided OSC a supplemental report on the additional investigation.

The Whistleblower's Disclosures

Ms. Grimes alleged that management officials at USAO-MDAL were aware of improper behavior by jurors during the *Siegelman* trial but failed to disclose it to the judge and defense counsel. She stated that one juror, and potentially others, passed notes to the U.S. Marshals in the courtroom during the trial. The notes allegedly discussed a Federal Bureau of Investigation

¹See *United States v. Siegelman*, No. 205-CR-119-MEF, 2006 WL 3218698 (M.D. Ala. Nov. 6, 2006).

(FBI) agent serving on the prosecution team, commented that he was “cute,” and inquired about his marital status. Ms. Grimes contended that a U.S. Marshal passed the messages to the USAO-MDAL prosecution team. In support of her allegations, Ms. Grimes produced an e-mail exchange between her and First Assistant United States Attorney Patricia Watson (FAUSA Watson). FAUSA Watson wrote “I just saw Keith in the hall. The jurors kept sending out messages through the marshals. A couple of them wanted to know if he was married.” Ms. Grimes stated that because the prosecutors did not inform the Court or opposing counsel of this alleged activity, the juror conduct was never reviewed.

Ms. Grimes also alleged that USAO-MDAL officials unnecessarily caused the U.S. government to pay salary, per diem, and travel expenses for a contract employee, Vallie Byrdsong, from October 20, 2002, until June 30, 2007. She stated that Mr. Byrdsong was hired through a personnel agency to provide litigation support services for the *Siegelman* prosecution. Ms. Grimes claimed that Mr. Byrdsong was not as qualified as some USAO-MDAL employees and that his lengthy assignment on the case constituted gross mismanagement and/or a gross waste of funds. She explained that three or four employees at USAO-MDAL could have performed the work Mr. Byrdsong was hired to do, and, further, that Janie Crooks, a paralegal, was hired by USAO-MDAL specifically to alleviate the cost of a contract employee. Ms. Grimes stated that Ms. Crooks did not work on the case as intended, instead, the government incurred the costs associated with Mr. Byrdsong’s employment as a contractor.

Ms. Grimes also alleged that victim impact funds were improperly used to pay Mr. Byrdsong’s transportation and per diem expenses. She stated that because Mr. Byrdsong worked on the *Siegelman* case for an extended period of time, USAO-MDAL officials wanted him to return to Montgomery to attend the sentencing portion of the case and a celebration at the home of then-Acting U.S. Attorney Louis V. Franklin, Sr.

Finally, Ms. Grimes alleged that USA Canary abused her authority by obstructing an OPR investigation. She stated that OPR investigated the conduct of AUSA Randolph Neely from 2004-2005. FAUSA Watson reportedly told Ms. Grimes that USA Canary had a “soft spot” for AUSA Neely and wanted to limit any disciplinary action that might be taken against him. According to the information provided, FAUSA Watson instructed Ms. Grimes that the OPR investigators were not to be told of two incidents involving ASUA Neely: his arrest for public intoxication, and an incident when he reportedly lunged at AUSA Watson when she tried to counsel him. According to Ms. Grimes, FAUSA Watson later asked her if she would tell OPR officials about the two incidents; Ms. Grimes replied that she would. When the OPR investigators arrived to investigate AUSA Neely, Ms. Grimes was not interviewed. She believed that she was not interviewed because either FAUSA Watson or USA Canary removed her name from the list of interviewees after she informed FAUSA Watson that she would discuss the two incidents described. Ms. Grimes reported that OPR cleared AUSA Neely of misconduct and dropped all criminal charges against him. She alleged that OPR never learned of the two incidents.

Finally, Ms. Grimes reported that after she disclosed these allegations to the DOJ OIG and filed an EEO complaint, she herself became the subject of a criminal investigation initiated by USAO-MDAL officials.

The Report of Investigation by the U.S. Department of Justice

Associate Deputy Attorney General David Margolis assigned the investigation to two senior AUSAs, Ronald R. Gallegos of the District of Arizona, and Steven K. Mullins of the Western District of Oklahoma. AUSAs Gallegos and Mullins worked with the Executive Office for the United States Attorneys (EOUSA) to coordinate logistics for the investigation. They obtained documents on the OPR investigation from EOUSA General Counsel's office and worked onsite in Alabama to review contract, personnel, and litigation files. The investigation also included interviews with USA Canary; FAUSA Watson; members of the *Siegelman* prosecution team; AUSA Neely; Debbie L. Shaw, Criminal Legal Assistant and *Siegelman* trial team member; H. Retta Goss, Administrative Officer; FBI Special Agent Keith Baker; Vallie Byrdsong; Frederick C. Leiner, OPR Assistant Counsel; William J. Birney, OPR Associate Counsel; and Ms. Grimes. AUSAs Gallegos and Mullins also received and reviewed additional documentation from EOUSA, USAO-MDAL, and Ms. Grimes throughout the investigation.

The investigation did not substantiate the allegations. A brief summary of the report and its findings follows.

Failure to Disclose Improper Contact with Jurors

The report begins its analysis by explaining that the improper conduct alleged involved a female juror, and perhaps others, passing notes to the prosecution team through the U.S. Marshal(s) in the courtroom, and that the prosecution team had failed to notify the judge and defense counsel of this improper communication. In her interview, Ms. Grimes clarified that FAUSA Watson told her the alleged communication was oral, while Mr. Byrdsong told her that the messages were written. The investigation examined the possibility of any type of communication. The report discusses the precedents regarding external and internal influences on a jury drawing the distinction between the former which are presumptively prejudicial, and the latter which are not.

In this case, in order to protect the integrity of the jury and to maintain security, the Honorable Mark E. Fuller, Chief United States District Judge for the Middle District of Alabama, entered an Order for Partial Sequestration (Order) of the *Siegelman* jury. The Order charged the U.S. Marshals Service with ensuring that no juror had any unauthorized contact with any outside person. In carrying out its duties under the Order, the Marshals Service assigned U.S. Deputy Marshals from outside Alabama to limit further the possibility of any impermissible contact. The Deputy Marshals served on a rotating schedule and were responsible for escorting, protecting, and sequestering the jury. Each morning the jurors were picked up from a different location designated by the U.S. Marshals, brought to the courthouse by a van, and entered the building through a back door. The jurors used non-public restrooms, took breaks in areas outside the public reach, and ate breakfast and lunch in private rooms. They were accompanied by U.S.

Marshals throughout the day and in the courtroom. The jurors were allowed to return to their homes at night.

The report notes that the origin of Ms. Grimes' allegation was an e-mail exchange between Ms. Grimes and FAUSA Watson regarding FBI Special Agent Keith Baker, a member of the *Siegelman* trial team. The report stated that FAUSA Watson recounted a rumor she had heard to Ms. Grimes on June 15, 2005, the day jury deliberations began. The text of the e-mail was as follows: "I just saw Keith in the hall. The jurors keep sending out messages through the marshals. A couple of them wanted to know if he was married." During her interview, FAUSA Watson acknowledged that she wrote the e-mail but said that she did not speak with Special Agent Baker that day. She was reminded of the rumor when she passed him in the hall that day and later repeated it.

The three prosecutors on the *Siegelman* case, AUSAs Louis V. Franklin, Steve Faega, and J.B. Perrine, stated that they had neither received nor initiated communication with the jury, and that no messages were passed between the jury and the government during the trial. Special Agent Baker also denied receiving any notes from the jurors or having any contact with them. He stated that, as of the date of his interview, he had never spoken with any of the jurors. Special Agent Baker volunteered that the rumor of messages from the jury may have started when a member of the Court Clerk's staff joked with him during a break in the trial that the jurors wanted to know if he was married. He reported that this was the only time any such comment was made. Special Agent Baker viewed it as a joke and was not sure that the comment had actually been made. He did not send any message to the jury in response.

Debbie Shaw, USAO-MDAL Criminal Division Supervisory Legal Assistant, denied that any written or verbal communications were passed between the prosecution and the jury. Ms. Shaw attended the trial every day as a member of the trial team. She did recall that on one occasion a member of the Court Clerk's office punched Special Agent Baker in the arm and said, "I heard some of the jurors talking, they think you're cute, they were wondering if you were married." According to Ms. Shaw, Special Agent Baker "turned beet red," but did not send any message back to the jury. The report notes that Ms. Shaw was not confident that any juror had actually made the comment about Special Agent Baker. She characterized the conversation as "short lived" and said it was unlikely that prosecutors were aware of it.

Mr. Byrdsong was also interviewed about the alleged improper conduct and communicating it to Ms. Grimes. He attended the trial every day and stated that he was unaware of any message passed between the government and the jury, and did not believe any such communication had occurred. Mr. Byrdsong was aware that Special Agent Baker had been teased by a member of the Court Clerk's office, although he did not overhear the conversation. When asked whether he told Ms. Grimes about the incident she mentioned in her e-mail, he replied, "Yes, I'm sure I did at some point." Mr. Byrdsong went on to say that he did not recall specifically what he said to Ms. Grimes but that he would have "played it up" for amusement.

The *Siegelman* defendants raised the issue of jury misconduct to the Court after their convictions. Their allegations of jury misconduct included issues other than improper

communication between the government and the jury. Nevertheless, investigators reviewed portions of the trial transcript which included Judge Fuller's examination of each juror on the issue of possible improper conduct or communications. The report states that no juror gave any answer that indicated there had been any communication between any juror and the prosecution team.

The report concludes that there was no evidence to support the allegation that jurors had external contact with USAO-MDAL prosecutors and no evidence that jurors were exposed to external influence. The report stated that without external contact or influence, there was no presumption of prejudice and no mandatory disclosure by the prosecution was required. The report opines that the evidence gathered supports, at best, the conclusion that during the trial one juror commented to another juror about the attractiveness of an FBI agent, and further, that the comment was overheard by a member of the Court staff. The report explains that this communication, if it occurred at all, would be an internal communication, or *de minimus* conversation between jury members. Moreover, its content does not demonstrate any type of bias, or any juror's opinion as to the guilt or innocence of the defendants. The report further states that this type of internal contact does not trigger a presumption of prejudice. Absent the presumption of prejudice, the law does not require mandatory disclosure to the Court.

The report makes it clear that the evidence does not establish, and the investigation did not find, that any juror ever made such a comment. However, even if the comment was uttered, it was not of the type that would be presumptively prejudicial and subject to mandatory disclosure. Thus, the report concludes that the information obtained by the investigation does not support a finding of a violation of law, rule, or regulation, gross mismanagement, or an abuse of authority.

Unnecessary Costs of a Contract Employee

Ms. Grimes alleged that between October 2002 and June 2007, there were three to four DOJ employees who could have provided the litigation support services rendered by independent contractor, Vallie Byrdsong and that expenditures generated by Mr. Byrdsong's continued employment resulted in gross mismanagement and a gross waste of funds. The investigation into this allegation reviewed the development of the *Siegelman* prosecution and the staffing needs associated with that series of cases as well as the staffing needs and workload of the USAO-MDAL.

The criminal investigation which gave rise to the prosecution of former Governor Siegelman began in 2001, when the USAO-MDAL and Alabama Attorney General's Office began pursuing multiple federal corruption cases. The size of the investigative team and the scope of the investigation grew to include approximately 20 prosecutors and investigators and one million documents. The report states that USAO-MDAL did not have sufficient computer equipment or support personnel for this effort. Due to the scope of the investigation, the report explains that the FBI contracted with Maxwell Air Force Base for a 4,000 square foot facility to house the personnel and evidence. This effort ultimately led to a number of prosecutions, collectively referred to in the report as the *Siegelman* matter for simplification.

In March 2002, USAO-MDAL requested \$295,000 from EOUSA for equipment and litigation support for the *Siegelman* case citing the magnitude of the investigation and prosecution as justification for the additional support. DOJ's Public Integrity Section joined the *Siegelman* investigation in June 2002, and in USAO-MDAL's request for additional funding to support the prosecution. EOUSA approved \$99,000 for additional contract personnel for litigation support services through March 15, 2003. Mr. Byrdsong and another contractor were hired in August 2002 to work on the prosecution team. The report describes Mr. Byrdsong as "very qualified" for the information technology and data management services required based on his education and proficiency in computer programming, and in business and law computer programs.

Several additional requests for funding to support the continued use of contract personnel followed. In February 2003, USAO-MDAL requested \$75,000; in July 2003, \$20,750. The July request noted that because of the successful prosecution of a number of lower level defendants, the case would not be resolved by September 2003. On the contrary, the case was expanding and additional funds for support were needed. In October 2003, a request was submitted and funding approved for two contractors for the *Siegelman* case through September 2004. That funding was cut down to one contractor, Mr. Byrdsong, in September 2004. EOUSA reviewed the request for \$256,000 and funded only \$53,000 for an approximately 4-month period. EOUSA requested that USAO-MDAL submit a new request in January 2005 and the report notes that over the next few months, the remainder of the *Siegelman* trial, EOUSA reviewed and approved several short-term funding requests. By way of comparison, the report states that in January 2005 USAO-MDAL estimated an additional \$91,000 in funds were needed for the *Siegelman* prosecution, whereas the entire litigation budget for USAO-MDAL for one year was \$80,000.

The investigation also reviewed USAO-MDAL staffing and the issue of whether DOJ employees could have performed the same services rendered by the contract personnel. In a criminal division of 12 AUSAs, each Legal Assistant worked for three AUSAs. The report points out that the office was experiencing an increase in the criminal caseload and it would have been problematic to reassign personnel for such a long-term project.

Ms. Grimes alleged that there were DOJ employees equally capable of performing the necessary work, for instance, Ms. Elizabeth J. Crooks, hired in October 2002, as the Legal Assistant to the Law Enforcement Coordinator and FAUSA Watson. However, the USAO-MDAL disagrees. The report quotes from the Official Written Reply submitted on Behalf of MDAL's U.S. Attorney's Office to AUSA Mullins which states that Ms. Crooks did not have the skills necessary to perform duties assigned to Mr. Byrdsong. In addition, USAO-MDAL notes that Ms. Crooks could not have done her job if she was assigned to the off-site facility where the work on the *Siegelman* case was done and where Mr. Byrdsong processed the documents. The report further explained that Legal Assistant Natalie Seagers, hired in October 2002, provided support for three Assistant United States Attorneys in the criminal division. To remove her and increase the number of attorneys assigned to each of the remaining support staff would have been difficult. Supervisory Legal Assistant for the Criminal Division, Debbie Shaw, who was interviewed on this issue, noted there were other cases being prosecuted by the office and that

the Grand Jury was meeting. She opined that if Legal Assistants had been reassigned to the *Siegleman* case, the remaining staff would not have been able to handle the increased workload.

The report also states that Mr. Byrdsong could not be easily relieved of his position when Ms. Grimes began work on the *Siegleman* case in April 2005. The report lists Ms. Grimes' personnel achievements including her Special Act Award for her work as a civil litigation paralegal, her six weeks of DOJ training, her promotion in June 2005 from GS-11 to GS-12, and her 65 hours of overtime in 2006, as examples of her significant duties and engagement in her role as civil paralegal. Consequently, she was fully occupied in the other work of the office and would have been unable to replace the contract employee.

The investigation determined that the litigation support funding for the entire four-year period totaled approximately \$532,000. This was the amount paid for Mr. Byrdsong for five years and for another contract employee for two years. When viewed in the context of the needs of the *Siegleman* prosecution effort, the limited budget of USAO-MDAL, and the personnel needs of the USAO-MDAL for other litigation matters, the report concludes that the expenditure for contract employees was not a gross waste of funds. The report emphasizes that the expenditures were reviewed and approved by EOUSA. In addition, the report concludes that the litigation and personnel budget of USAO-MDAL was limited, so the use of contract personnel did not adversely impact USAO-MDAL. Rather, the use of a contract employee seemed to have allowed for a more effective use of local assets for increased criminal and civil enforcement. Finally, the report notes that as time went on, Mr. Byrdsong's expertise in the document management systems and the information specific to the *Siegleman* case made him irreplaceable to the prosecution.

Improper Use of Victim Impact Funds

After the conclusion of the *Siegleman* trial in July 2006, Mr. Byrdsong was no longer needed for litigation support and he returned to Washington, D.C. In July 2007, approximately one year later, Mr. Byrdsong returned to Alabama during the sentencing of Mr. Siegelman and Mr. Scrushy. The report explains that USAO-MDAL prosecutors subpoenaed Mr. Byrdsong to attend the sentencing as a possible witness. Prosecutors wanted him present because he was the only person "fluent" with the exhibit system he created. Mr. Byrdsong was to testify if the defendants claimed that they did not receive a document or documents during the trial.

The Fees and Expenses of Witnesses is a special Congressional appropriation which provides funding for witnesses appearing in court on behalf of DOJ. Accounting services and payment disbursements for these expenses are handled by the U.S. Marshals Service. Section 28 U.S.C. § 1821 contains the basic fees allowed for fact witnesses. According to the report, the authority to incur and reimburse unusual expenses of witnesses is found in 28 U.S.C. §§ 524 and 530C. The report notes that generally cases involving unusual expenses are those which are complex, involve voluminous documents, or an unusually large number of witnesses.

In order to be reimbursed, a Form OBD-3 must be filled out and submitted to the U.S. Marshals Service. According to the report, in most U.S. Attorney's Offices, the Victim-Witness Coordinator maintains a master file for OBD-3s filed with the U.S. Marshals.

In this case, the investigation found that on the final night of sentencing, the Victim-Witness Coordinator was not at the office and Mr. Byrdsong did not fill out the paperwork necessary for an OBD-3. In the absence of the coordinator, Mr. Byrdsong was provided with a substitute form. However, he never completed it nor did he submit his receipts. During his interview he explained to investigators that Alabama had been good to him and he just decided not to seek reimbursement. Thus, Mr. Byrdsong was never actually paid with the victim-witness funds. Notably significant, however, is the report's conclusion that even if such a payment had been made, it would have been proper under 28 U.S.C. §§ 524 and 530C because of his status as a potential witness during the sentencing.

Obstruction of OPR's Investigation

In May 2004, FAUSA Watson met with AUSA Neely regarding alleged failures in his performance. She informed AUSA Neely that he was under investigation by USAO-MDAL in order to evaluate whether action should be taken against him. USA Canary suggested that FAUSA Watson work with the EOUSA, which, in turn, referred her to OPR. OPR commenced an investigation and in March 2005, lead investigator Frederick Leiner asked FAUSA Watson for the names of potential witnesses. According to the report, FAUSA Watson orally gave Mr. Leiner a list of names and contemporaneously created a note listing her name and the names of Ms. Grimes, Mr. Neely, Ms. Ann Williams, Ms. Glenna Ryals, Mr. Kenneth Vines, and Mr. Stephen Doyle. Mr. Leiner conducted interviews with Mr. Neely, Ms. Williams, Mr. Doyle, and Ms. Watson. Ms. Grimes was never interviewed by OPR for this matter. She alleged that she was originally listed as a potential witness but was removed by USAO-MDAL officials the day before OPR came to investigate because she said she would not withhold certain negative information regarding two incidents involving AUSA Neely.

According to the report, both FAUSA Watson and Mr. Leiner stated that OPR determined who to interview and that USA Canary and FAUSA Watson did not have the authority to modify the list of interviewees scheduled by OPR. Ms. Grimes was never on OPR's witness list, nor did she see FAUSA Watson's note listing persons to be interviewed. The report refers to an e-mail sent by Mr. Leiner to FAUSA Watson the week before his interviews that supports this conclusion. In the e-mail, Mr. Leiner confirms the scheduling details for the interviewees but does not list Ms. Grimes among those to be interviewed.

Moreover, the report states that the information Ms. Grimes intended to provide OPR was not material to its investigation into whether Mr. Neely's failure to file documents in two of his cases or his waiver of a bill of costs without authorization in a third case constituted professional misconduct. The report concluded that the incidents identified by Ms. Grimes had no bearing on an investigation into possible professional misconduct. Thus, the failure to interview Ms. Grimes did not deprive OPR of information material to its investigation.

The investigators also concluded there was no evidence of favoritism by USA Canary. According to the report, FAUSA Watson stated that USA Canary does not have a “soft spot” for AUSA Neely and, further, she opined that USA Canary has never shown favoritism or bias toward any employee in USAO-MDAL. The report also construed statements by Mr. Leiner to indicate that he did not suspect favoritism toward AUSA Neely.

Because the investigators found that there was no obstruction of OPR’s investigation into AUSA Neely’s professional conduct, there was no evidence to support Ms. Grimes’ allegation that USAO-MDAL management officials abused their authority. Thus, the abuse of authority allegation was unsubstantiated.

Criminal Investigation of Tamarah Grimes

In July 2007, Ms. Grimes filed an EEO complaint against USAO-MDAL, alleging gender discrimination and sexual harassment during her assignment on the *Siegelman* case. In early November 2007, mediation was conducted by AUSA Sharon Stokes, from the Northern District of Georgia. USA Canary and FAUSA Watson were present on behalf of USAO-MDAL, and AUSA Frederick Menner was present on behalf of EOUSA, General Counsel’s Office.

During the mediation, Ms. Grimes informed Ms. Stokes that she did not think that USAO-MDAL officials believed her claims. USA Canary, FAUSA Watson, and AUSA Menner confirmed that they did not find her allegations credible. According to Ms. Stokes, Ms. Grimes informed her that she had “recordings” or “tape recordings” that supported her EEO complaints. Ms. Stokes’ contemporaneous notes from the meeting contain the word “tapes.” Ms. Stokes then relayed to agency officials present the purported existence of tape recordings. They, in turn, requested to listen to the tapes. The report states that Ms. Grimes wanted to discuss the matter with her attorney, Mr. Scott Boudreaux, who was allegedly in possession of the recordings. On the second day of the mediation, Ms. Stokes informed agency officials that Ms. Grimes would not turn over the recordings.²

USA Canary, FAUSA Watson, and AUSA Menner became concerned that Ms. Grimes could have tape recorded conversations which included sensitive information such as grand jury, privileged, work product or sensitive law enforcement information and that she had given those tapes to someone outside of DOJ. In response to this concern, AUSA Menner contacted his supervisor and the EOUSA General Counsel’s Office referred the allegations to the DOJ OIG.

The report concludes that no violation of the Whistleblower Protection Act (WPA) or abuse of authority occurred because USAO-MDAL management officials did not refer their concerns to the DOJ OIG. The report states that the WPA prohibits management officials from retaliating against employees who make protected disclosures. 5 U.S.C. § 2302(b)(8). To establish a violation, it must be shown that the official knew of the disclosure and that retaliation was a significant factor in the official taking adverse action against the employee. The investigators in

²The report points out that Ms. Grimes denies the existence of any tape recorded conversations of USAO-MDAL employees. She maintains that the mediator did not understand she was referring to written recordings.

this case concluded that the evidence did not support a finding that USAO-MDAL management officials initiated a criminal investigation of Ms. Grimes in retaliation for her submitting protected disclosures because the referral was made by the EOUSA General Counsel's Office.

Similarly, the report concludes that there was no abuse of authority by USAO-MDAL management officials because they did not provide the information which resulted in the criminal investigation of Ms. Grimes to the DOJ OIG. AUSA Menner reported the allegation that Ms. Grimes allegedly taped USAO-MDAL employees and provided them to an outside party. The EOUSA General Counsel's Office, in turn, referred the allegations to the OIG. The report concludes that USAO-MDAL management officials played no part in the referral. Therefore, no abuse of authority occurred.

Furthermore, even if USAO-MDAL officials had initiated the criminal investigation of Ms. Grimes, no abuse of authority would have occurred. The report states that all those present at the mediation, with the exception of Ms. Grimes, believed that taped recordings existed and had been provided to someone outside DOJ. This information alone was the basis for the OIG investigation. Thus, investigators concluded there was no evidence of arbitrary or capricious action and, therefore, no abuse of authority. Finally, the report states that DOJ employees are required to report possible violations of law under 28 C.F.R. § 45.11.

The Supplemental Report of the Department of Justice

In a letter dated November 7, 2008, the Chairman of the House Committee on the Judiciary and Chair of the Subcommittee on Commercial and Administrative Law sent a letter to then-Attorney General Mukasey regarding Ms. Grimes' allegations. The Committee was "troubled" that the report concluded that there was no improper jury contact without interviewing the U.S. Marshals who supervised the *Siegelman* jury and who are identified in the e-mail from FAUSA Watson as the conduit for jury messages to the prosecution. The letter also noted with concern that no jurors appeared to have been interviewed. The Committee requested that the Attorney General review these issues, conduct additional investigation, and respond.

The supplemental report reiterates that all members of the government's trial team were interviewed during the initial investigation. The initial investigation also included a review of the trial transcripts and the Judge's examination of each juror regarding any improper or outside contacts during the trial. Judge Fuller asked each juror specifically whether he or she had outside contacts from any source during the trial. All jurors denied witnessing or participating in any improper communications.

The supplemental investigation focused on individuals not interviewed during the initial investigation. Judge Fuller authorized DOJ investigators to speak with employees of the Court regarding the allegations of improper contacts with the jury. An interview with Jury Administrator Melissa F. Myers was subsequently authorized by the Clerk of Court. In addition, the U.S. Marshal for the Middle District of Alabama, Jessie Seroyer, Jr., was contacted and fully cooperated with DOJ's inquiry.

The investigators interviewed U.S. Marshal Seroyer as well as six additional Deputy U.S. Marshals involved in the supervision of the *Siegelman* jury. The supplemental report describes the logistics necessary for a partially sequestered jury. Deputy Marshal Michael Bates of the Middle District of Alabama and four rotating Deputy Marshals from outside Montgomery, Alabama, were responsible for the direct oversight of the jury. Daily supervision for jury security was handled by U.S. Marshal Seroyer, who was present in the courtroom for almost every session, and Supervising Deputy Pamela C. Harding, who was with the jury during most breaks.

The U.S. Marshals involved in the jury's security detail stated that they were not aware of any contact between the jury and members of the prosecution team. Moreover, they believed it would have been impossible for any such communications to have occurred. The U.S. Marshals specifically denied passing notes or oral messages between the jury and the prosecution team.

Similarly, all U.S. Marshals involved in direct oversight of the jury denied witnessing or facilitating any improper communication between the jury and the prosecution team. These rotating Deputy U.S. Marshals accompanied the jury everywhere they went and stated that they did not believe jury members could have been passed notes without being observed. While in the courtroom, a Deputy Marshal was placed between the jury box and the prosecution table, and when they took a break, a Deputy Marshal accompanied them. The juror room was approximately three feet from the jury door, and the bathrooms for the jury were located next to the juror room. According to the U.S. Marshals interviewed, no member of the prosecution or defense teams came to the jury door.

The interview with Jury Administrator Myers supported the information provided by the marshals. She stated that her role with the *Siegelman* jury consisted of coordinating their meals and snacks. She reported that she told the jurors in the beginning that she did not want to hear any discussion of the case and not to ask her any questions. Their communication with her, she instructed, was to be limited to issues such as meal planning and payment matters. She also reported that the Marshals were with the jury at all times.

Investigators also interviewed Ms. Myers about a comment she was purported to have made that may have reflected a conversation in the jury room. As noted in the initial investigation, two members of the prosecution team reported this comment to investigators. Specifically, Ms. Myers acknowledged that during a conversation with Special Agent Baker, she said that one of the jurors thought he was "very cute."³ Ms. Myers stated that the jury was not present when the comment was made, that she did not attribute the comment to any particular juror, or intimate which juror may have made such a comment. Rather, she explained this was a comment made in the context of friendly banter with Special Agent Baker and was intended as a jest to embarrass him. Ms. Myers emphasized that no juror ever made that statement to her, nor did she overhear it, she just made it up on the spur of the moment.

³Supplemental Report at p. 14.

Given the detailed testimony provided by the U.S. Marshals who participated in the case and the Jury Administrator, the investigators concluded that the supplemental investigation supported the initial report's conclusion that no improper communication between the jury and the prosecution occurred. There was no evidence to support the allegation that a violation of law, rule or regulation occurred.

The Whistleblower's Comments

Ms. Grimes provided comprehensive comments on the report which are briefly summarized here. She begins by stating that the report raises significant questions regarding the credibility and integrity of USA Canary and FAUSA Watson. According to Ms. Grimes, the investigation did not gather information from all pertinent sources but instead raised more controversy and ethical and legal issues.

Improper Contact with Jurors

Ms. Grimes noted that her e-mail exchange regarding the allegedly improper jury contact was with FAUSA Watson, the highest non-appointed employee of USAO-MDAL. She argues that whether or not the allegation of improper conduct was true is irrelevant; that FAUSA Watson was aware of the rumor, thought it to be true, yet failed to disclose it to the judge or opposing counsel for any action deemed appropriate. FAUSA Watson's inaction is especially egregious, Ms. Grimes argues, because, among other things, she also was the Ethics Officer and, thus, had a duty to "exercise the highest discretion, integrity and honor" and report the incident to the Judge and defense counsel when she learned of it. Ms. Grimes also states that Mr. Byrdsong did not retract his statements regarding the inappropriate jury contact to her.

Unnecessary Costs of a Contract Employee

Ms. Grimes included an affidavit from Elizabeth J. Crooks, a former Legal Assistant at USAO-MDAL, with her comments. Ms. Grimes contends that the information gathered indicates that Ms. Crooks was hired to work on the *Siegelman* case. Instead, despite her litigation experience and her knowledge of the program, Summation, Ms. Grimes points out that Ms. Crooks was tasked with clipping news articles on the *Siegelman* case from the three local newspapers while Mr. Byrdsong was ultimately hired to manage the *Siegelman* documents.

Ms. Grimes maintains that Mr. Byrdsong's experience in economics and computer programming skills were irrelevant and not necessary or essential to the case. She states that he had no trial experience and that there were two highly-qualified, skilled paralegals available to work on the case. In addition, she states that the duties he performed at trial were low level Legal Assistant duties and could have been performed by Debbie Shaw, Supervisory Legal Assistant for the MDAL Criminal Division. She continues to assert that the management officials sought and obtained federal funding for an expensive contract employee with no trial experience to perform basic paralegal services which could have been provided by the paralegal staff at MDAL. She comments that the expenditures related to Mr. Byrdsong's salary and travel constitute gross mismanagement and or a gross waste of funds.

Improper Use of Victim Impact Funds

In response to the report's findings that the Victim Impact Funds were not used to pay Mr. Byrdsong's travel and per diem expenses to attend the sentencing phase of the *Siegelman* trial, Ms. Grimes states that he was not called as a witness during the sentencing phase. In addition, she notes that he told her his expenses were paid from those funds even though he ultimately did not seek reimbursement for those expenses. She maintains that he would have been paid from those funds if he had sought reimbursement which is consistent with her disclosure.⁴

Obstruction of OPR's Investigation

Ms. Grimes comments that FAUSA Watson is inconsistent in her referral of issues to OPR. She notes that FAUSA Watson did not refer an AUSA to that office for, what she describes as serious misconduct" i.e., public intoxication, and an incident where he lunged at FAUSA Watson. In contrast, she did refer Ms. Grimes to OPR for investigation on a "fanciful leap" that she had possibly tape recorded grand jury or other sensitive law enforcement information and disseminated it outside DOJ. She points out that the difference between these two individuals is that Ms. Grimes had made whistleblower disclosures regarding the conduct of officials in the MDAL whereas the AUSA had not.

Ms. Grimes presents an excerpt of FAUSA Watson's testimony and refutes her assertion that Ms. Grimes is untruthful. She notes that FAUSA Watson apparently developed this opinion through the review of private and personal information on Ms. Grimes's Background Security Questionnaire. Ms. Grimes states that FAUSA Watson's dissemination of personal information during Ms. Grimes' EEO case was an attempt to discredit her personally after she was unable to do so professionally and is also a violation of the Privacy Act. She contends that the credibility of the FAUSA Watson, who instigated the criminal investigation of her, is questionable at best.

Criminal Investigation of Tamarah Grimes

Ms. Grimes emphasizes that the decision to refer her for criminal investigation occurred after a mediation session on her EEO case during a period of "socialization" among the mediator, USA Canary, FAUSA Watson and Mr. Menner from the EOUSA GCO. She continues to state that the referral, based on FAUSA Watson's concern and speculation that she may have tape recorded Grand Jury information or other sensitive law enforcement information has no basis in law or fact. As support for her statements, she includes testimony from her former attorney which states that no such tapes existed. Her attorney characterizes the conduct of DOJ Special Agent Ronald Gossard as belligerent, accusatory, and offensive. Moreover, the AUSA for the Middle District of Georgia twice declined Mr. Gossard's requests for an indictment of Ms. Grimes for making false statements. The case was declined because it lacked prosecutorial merit.

⁴As discussed in DOJ's report, reimbursing Mr. Byrdsong was permissible.

In her comments, Ms. Grimes notes that the OIG report of investigation into the taping allegation concluded that she had made several false statements without any substantive or objective evidence. As a result of that report, Ms. Grimes' security clearance has been revoked and her removal from service recommended.

Ms. Grimes concludes by stating her position is that the integrity of the investigation was irrevocably compromised by an orchestrated effort to support a finding that no violation of law, rule or regulation occurred. She disagrees with the findings of the report finding that it instead raises more questions than answers, omits key witnesses and the testimony of the witnesses included is easily rebutted.

Ms. Grimes' Comments on DOJ's Supplemental Report

Ms. Grimes describes her difficult experience as a whistleblower and the devastating effect it has had on her and her family. While she is proud to have done her duty as an ethical federal employee, the findings of DOJ's reports are disappointing. She hopes that other federal employees considering whistleblowing will learn from her example and appreciate the dangers and risks of coming forward.

Ms. Grimes maintains that the failure to interview the jurors omits an integral piece of the investigation. She states that the U.S. Marshal's Service is a component of DOJ and, as such, its employees are not impartial and have an interest in protecting DOJ. The jurors, in contrast, have no allegiance to DOJ and no federal careers to protect.

In conclusion, Ms. Grimes maintains that whistleblowers need more protection. Too often agencies discredit the messenger, i.e., the whistleblower. Better protection should be afforded those who engage in such protected activity. She hopes and remains confident that Attorney General Holder will ultimately act on behalf of USAO-MDAL employees who have been wrongfully terminated and the citizens of the Middle District of Alabama who have not been well served under U.S. Attorney, Leura Canary.

The Special Counsel's Comments and Conclusion

Based on the representations made in the agency reports, OSC has determined that the agency reports contain all of the information required by statute. We have also determined that the reports' findings appear to be reasonable.