



August 9, 2017

Mr. Jay Town
United States Attorney
The United States Attorney's Office
for the Northern District of Alabama
1801 4th Avenue North
Birmingham, Alabama 35203

Dear Mr. Town,

The Project On Government Oversight (POGO) requests that you, President Trump's recently confirmed U.S. Attorney for the Northern District of Alabama, recuse yourself from any criminal or civil matters related to the ongoing public corruption case involving the North Birmingham Superfund site.¹ Upon your recusal, if the case is to continue to be prosecuted or handled by the Northern District of Alabama's U.S. Attorney's office, you should also recuse yourself from any other decisions that affect the investigation, or the staff involved in the investigation, and subsequent charging or prosecutions. A more satisfactory solution would be for the case to be assigned to the Justice Department's Public Integrity Section or to another U.S. Attorney's office.

The Public Integrity Section notes there are times when "it may be inappropriate for the local United States Attorney's Office to handle a particular corruption case." In particular:

Public corruption cases tend to raise unique problems of public perception that are generally absent in more routine criminal cases. An investigation of alleged corruption by a government official, whether at the federal, state, or local level, or someone associated with such an official, always has the potential of becoming a high-profile case simply because its focus is on the conduct of a public official. In addition, these cases are often politically sensitive because their ultimate targets tend to be politicians or government officials appointed by politicians.²

On June 22, 2017, the U.S. Attorney's Office for the Northern District of Alabama, under the leadership of an acting U.S. Attorney, publicly announced an ongoing public corruption investigation that involves the law firm Balch & Bingham, the coal company Drummond, and their alleged role in bribing a state legislator in Alabama to block the expansion of an

¹ U.S. Senate, "Nominations Confirmed (Civilian)." https://www.senate.gov/legislative/nom_conf.htm (Downloaded August 7, 2017); Town is one of only three U.S. Attorney nominees to be confirmed by the Senate so far this administration.

² Department of Justice, *Report to Congress on the Activities and Operations of the Public Integrity Section for 2015*, <https://www.justice.gov/criminal/file/891961/download> (Downloaded August 7, 2017)

Environmental Protection Agency (EPA) Superfund site in Birmingham. That state legislator has admitted to taking bribes from Balch and Drummond.³

POGO's reason for calling upon you to recuse yourself is that three key officials who are your political allies and supported your appointment as U.S. Attorney—Attorney General Jeff Sessions, Senator Luther Strange, and Senator Richard Shelby—all have deep political, financial, or personal ties to Balch and Drummond. Furthermore, Senator Strange has been linked to the bribery scandal.⁴

In Alabama, there have been public allegations that Senator Strange was present when bribes were offered related to the Birmingham Superfund site (Senator Strange disputes these allegations). As Alabama Attorney General, Senator Strange filed letters with the EPA in October 2014⁵ and January 2015⁶ declaring that the state would not provide any funding for the cleanup of the Birmingham Superfund site, located in a poor African American neighborhood. The Drummond Co. donated \$25,000 to his campaign two weeks before the first letter in October 2014 and another \$25,000 a month after the second letter in January 2015.⁷ A POGO report provides further details.⁸

You twice advised Senator Strange in political campaigns.⁹ He subsequently supported your nomination for U.S. Attorney. Senator Strange is now alleged to be involved in a bribery scandal under investigation by the office of which you are now in charge.

³ Department of Justice, "U.S. Attorney Charges Former Alabama Legislator in Bribery Conspiracy," June 22, 2017. <https://www.justice.gov/usao-ndal/pr/us-attorney-charges-former-alabama-legislator-bribery-conspiracy> (Downloaded August 2, 2017)

⁴ Brandon Moseley, "US Senate confirms three Alabamians this week," *Alabama Political Reporter*, August 4, 2017. <http://www.alreporter.com/2017/08/04/u-s-senate-confirms-three-alabamians-week/>; U.S. Senator Richard Shelby, "Alabama Political Reporter: Shelby supports Trump's picks for Alabama's US Attorneys," June 19, 2017. <https://www.shelby.senate.gov/public/index.cfm/2017/6/alabama-political-reporter>; Josh Moon, "Source: State Rep. was offered superfund bribe with Luther Strange present," *Alabama Political Reporter*, June 29, 2017. <http://www.alreporter.com/2017/06/29/source-state-rep-offered-superfund-bribe-strange-present/> (All downloaded August 2, 2017)

⁵ Letter from Luther Strange, Attorney General of the State of Alabama, to Heather Toney, Region 4 Administrator of Environmental Protection Agency, about listing the 35th Avenue Superfund Site on the NPL, October 23, 2014. <https://www.regulations.gov/document?D=EPA-HQ-SFUND-2014-0623-0007> (Downloaded August 2, 2017)

⁶ Letter from Luther Strange, Attorney General of the State of Alabama, to the Environmental Protection Agency, about the National Priorities List, Proposed Rule No. 61, January 20, 2015. <https://www.regulations.gov/document?D=EPA-HQ-SFUND-2014-0623-0036> (Downloaded August 2, 2017)

⁷ Alabama Secretary of State's Electronic Fair Campaign Practices Act Reporting System, "Contribution/Donation Search." <http://fcpa.alabamavotes.gov/PublicSite/SearchPages/ContributionSearch.aspx> (Downloaded August 2, 2017)

⁸ Adam Zagorin and Nick Schwellenbach, "Recusal Time, Again: Bribery Scandal Highlights Conflicts of Interest for AG Sessions and Links to Sen. Strange," Project On Government Oversight, July 31, 2017. <http://www.pogo.org/our-work/articles/2017/jeff-sessions-recusal-time-again.html>

⁹ Alabama Republican Party, "Rising Republican Star: Jay Town," October 28, 2013. <https://algotp.org/rising-republican-star-jay-town/> (Downloaded August 2, 2017)

Another public supporter of your nomination as U.S. Attorney is Attorney General Jeff Sessions. Balch and Drummond were, respectively, Senator Sessions second and third largest sources of campaign funding during his Senate career—and through their political action committees and employees have contributed an approximate total of \$300,000 to his campaigns since the late 1990s.¹⁰

As you may be aware, several Balch attorneys have worked in Senator Sessions' office through the years.¹¹ Currently, his high-profile deputy —Jeffrey H. Wood, the acting Assistant Attorney General of the Environment and Natural Resources Division—was a Balch partner up until he joined the Justice Department the day President Trump was inaugurated.¹² Mr. Wood has recused himself from any matter involving Balch and has specifically listed the Superfund site in Birmingham in his recusal list.¹³ You should follow Mr. Wood's lead and recuse yourself as well. We have also requested that Attorney General Sessions recuse himself.

Finally, Senator Richard Shelby, another principal sponsor of your nomination as U.S. Attorney, and for whom you appeared in a television campaign commercial in 2016, is a longtime recipient of campaign money from Balch and Drummond. According to public records, Senator Shelby has received approximately \$110,000 from Balch and \$155,500 from Drummond over his last three election cycles (1999-2016).¹⁴

Justice Department regulations state:

“...no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with... [a]ny person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or ...has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.”¹⁵

Given the ties your political patrons have to the two organizations at the heart of this bribery scandal, it is necessary that you recuse yourself from this investigation. Otherwise, your

¹⁰ POGO review of Federal Election Commission data compiled by the Center for Responsive Politics.

¹¹ Victoria Bassetti and Daniel Van Schooten, *At Least One-Third of Attorney General Nominee's Top Donors Have Matters Involving the Department of Justice*, Project On Government Oversight, January 9, 2017. <http://www.pogo.org/our-work/reports/2017/at-least-one-third-of-attorney-general-nominees-top-donors-have-matters-involving-doj.html>

¹² Testimony of Jeffrey H. Wood, Acting Assistant Attorney General, Department of Justice, before the House Judiciary Committee Subcommittee on Regulatory Reform, Commercial and Antitrust Law, June 8, 2017. <https://www.justice.gov/opa/speech/acting-assistant-attorney-general-jeffrey-h-wood-environment-natural-resources-division>; U.S. Senate, “Q4 2016 Lobbying Report for Balch & Bingham, LLP.” <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=9D1C3AAC-3F6B-4784-A68F-99C1D990D7C5&filingTypeID=80> (All downloaded August 2, 2017)

¹³ Memorandum from Karen M. Wardzinski, Chief, Law and Policy Section & Designated Agency Ethics Official, to OAG, Section Chiefs, Deputy Section Chiefs, and Assistant Section Chiefs, regarding the recusal list for Jeffrey Wood, February 27, 2017. https://www.eenews.net/assets/2017/04/25/document_gw_06.pdf (Downloaded August 2, 2017)

¹⁴ POGO review of Federal Election Commission data compiled by the Center for Responsive Politics.

¹⁵ 28 CFR 45.2, “Disqualification arising from personal or political relationship.”

involvement could cast a shadow over the investigation and create an appearance that it is not impartial.

Sincerely,

A handwritten signature in blue ink that reads "Danielle Brian". The signature is fluid and cursive, with the first name "Danielle" and last name "Brian" clearly distinguishable.

Danielle Brian
Executive Director

CC:

Senator Charles Grassley, Chairman, Senate Judiciary Committee
Senator Dianne Feinstein, Ranking Member, Senate Judiciary Committee
Representative Bob Goodlatte, Chairman, House Judiciary Committee
Representative John Conyers, Ranking Member, House Judiciary Committee
Rod Rosenstein, Deputy Attorney General, Department of Justice
Scott Schools, Associate Deputy Attorney General, Department of Justice
Raymond Husler, Chief, Public Integrity Section, Department of Justice
Cynthia Shaw, Director, Departmental Ethics Office, Department of Justice
Robin Ashton, Counsel, Office of Professional Responsibility, Department of Justice