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On Saturday, July 13, 1878, Thomas Minott Peters, the ex-chief justice of the Alabama Supreme Court, delivered a speech at a gathering of North Alabama Republicans at Mountain Home, in Lawrence County. At that time, the Republican Party of Alabama consisted of freedmen and a handful of free-thinkers, mostly concentrated in the Tennessee Valley. Peters talked about the Civil War Amendments and their promise to make full citizens of the former slaves of the American South; he spoke forcefully of the need of these fresh-baked citizens to realize their rights and responsibilities as citizens. He stressed that the work of civil rights was incomplete: women were disenfranchised. Peters presented a vision of a new Alabama, of a state in which blacks and whites would study together in schools, labor side by side in the fields and as citizens would dictate the politics of their state. He spoke of the promise of universal education and said this was essential to build a new class of citizens. He invoked the words of the Lord's Prayer and the promise of liberation contained in Christian scripture.

The message that Peters delivered was one of promise. A new age was coming to Alabama, he said, but the battle to realize it was not over. Black men and women of Alabama would still have to struggle for the recognition of their rights, both as human beings entitled to dignity and respect, and as citizens. He invoked the memory of Fort Pillow, where 228 federal soldiers fighting in the service of their country had been slaughtered. Most of those who died were black Alabamians, some from Lawrence County, and it's likely that some of their relatives were gathered at Mountain Home that day. He implored his audience not to forget this sacrifice, and to insist on the rights of citizenship that had been won at such a cost in blood.

But the vision that Peters presented was not to be realized - or at least not for another century. Today, and in this audience we see the realization of the Alabama that Peters envisioned that day.

But how many of you recognized that name, Thomas Minott Peters? When the Alabama Supreme Court opened its doors in its new home just a few years ago, it had a portrait of every chief justice in the court's history. Every chief justice but one. The missing justice was Thomas Minott Peters. Peters disappeared from the state's history books. And if he was present, he was derided as a "scalawag." In the years that followed his Mountain Home speech, Peters was ridiculed, threatened, persecuted and prosecuted in the courts. But Peters was arguably the greatest political visionary that Alabama produced in the nineteenth century. He was a lawyer, a civil libertarian, a man of immeasurable courage and conviction. He was also a man of great learning, a scientist. Harvard University still holds his voluminous correspondence with Asa Gray, his close friend, generally considered the premier American botanist and one of its greatest natural scientists. In his spare time, Peters had set out cataloging the plant life of the Tennessee Valley.

Why don't we know who Peters was? Part of that answer lies in Alabama's newspapers. I'll give you a brief sample. Here's the way the Moulton Advertiser reported Peters's dramatic validation of the promise of civil rights to the crowd at Mountain Home:

" [Peters] made a black republican speech and told them that he was a radical and intended to do a great many radical tricks before he died. He dwelt at length upon the 13th, 14th, and 15th Amendments and said that the 16th amendment would be the right of suffrage to women. The colored ladies ..., whose modesty he extolled, he said would vote. . . And here the unnatural monster seemed to gloat over the idea of defeating us with women votes, and forever fastening upon the white people of the South this radical yoke."

So why don't Alabamians know who Peters was? George Orwell tells us, "who controls the present, controls the past. Who controls the past control the future." Orwell would have no problem understanding Chief Justice Peters's fate.

But there are several answers to that question. One of them lies in the press. In Peters's day and thereafter, the media in Alabama has largely been in the hands of the Bourbons and their successors. [Bourbons are the politically conservative forces in the American south, closely associated with business and plantation agriculture, that aimed generally to restore, as closely as possible, the status quo ante the Civil War. They dominated the politics of the Democratic Party in Alabama with a few exceptions from the end of Reconstruction until the fifties.] The gross distortions I quoted from the Moulton paper were typical for the Alabama media of his day; if anything the vilification was even worse in the papers in Montgomery and Mobile. Birmingham was, at this point, just coming into existence, and indeed Peters played a significant role in that process - a role you're not likely to read about in any official accounts of Birmingham's history. He dedicated more than a decade to a selfless crusade to get Alabama's blacks a basis for self-sufficiency, getting them land. Much of his struggle focused on land rights in the fifty mile radius around the urban center that later emerged as Birmingham.

While the Bourbon papers called Peters a scalawag and attacked him as corrupt and immoral, Bourbon political figures turned to other tools. This included a politically motivated prosecution. Peters, whose friendship and support of the black community was beyond question, was attacked on this basis. Bourbon prosecutors claimed that in his efforts to help black settlers around Birmingham secure land he was actually swindling them of their mineral rights.

In the Bourbon press, Peters was assailed as a thief and a trickster. However, the national press took notice of what was going on and wrote about it - one of the publications covering the developments in Alabama with some care was Harper's. They called the situation correctly. Peters was trying to build a platform for the Republican Party in Alabama, and the Bourbons were out to use every means in their power - including the law courts - to stop him. (Peters, incidentally, was a faithful subscriber to Harper's from 1857.) So in the decade after Reconstruction came to an end, the

readers of the Alabama press had one notion of what was going on in their state, and the readers of the American national media had quite another. And today, speaking with historical detachment, we can said that the national media called it pretty much the way it was, but the Alabama media's reporting was ridiculous.

When we spring forward one hundred and thirty years, quite a bit has changed. But we might just cite that saying, "The more things change, the more they stay the same."

That pattern held very firmly through the heyday of the Civil Rights Movement, 1955 to 1968. During much of this period, Alabama's print media spoke in denigrating terms of the civil rights movement - it was a bunch of "outside agitators," they wrote. Remember that Martin Luther King Jr.'s "Letter from a Birmingham Jail" was composed 45 years ago this month in response to an attack on King that appeared - where else? - in the Birmingham News. And that in To Kill a Mockingbird, that greatest American novel of the twentieth century, written by an Alabamian about the state of justice and society in Alabama, Scout links her discovery of the disconnect between the real world in her town and the artificial and cruel world of polite society to the time she started reading the Mobile Register. But by and large, the major papers dealt with the Civil Rights Movement by simply ignoring it and not reporting it. The Birmingham News tried to come clean about this a few years ago with an exhibition in which it showed never-before-revealed pictured it had of the Civil Rights era. Throughout this period, Alabamians had to turn to the national media to get the most important local news.

And today, I think this phenomenon is recurring. We see it in the coverage of a series of suspiciously political prosecutions and criminal investigations, which the national media are now coming to focus on and on which they publish a message that is quite different from that of the major local Alabama print media.

I came to study the prosecution of Don Siegelman not through the optic of modern Alabama politics, but through an examination of the transformation of the Department of Justice during the Bush Administration. President Bush was never very shy about using the machinery of government to support the ambitions of his party. Of course, he's not exactly alone in this regard. Every president does so to some extent.

However, under President Bush we've seen a particularly troubling phenomenon: the use of criminal prosecutions to pursue a partisan agenda. And one of the most pernicious of them is the politicization of the U.S. attorney's offices and the idea of political prosecutions. During the first six years of his administration, 5.8 cases were opened against a Democrat for every 1 against a Republican. This occurred at a time in which Democrats accounted for right at 50% of the elected officeholders in the country, with Republicans and Independents accounting for the other 50%. The odds that such a ratio would be reached without selective direction at the top of the Administration are about 1 in 10,000. Something else struck me as very strange. Roughly eighty per cent of these

cases were assigned to Republican-appointed judges on the bench, and a disproportionate number went to judges recently appointed by President George W. Bush. Judicial selection is supposed to be random, and the likelihood of this occurring without outside manipulation was also extremely slight.

Following up on some tips from inside of the Justice Department, I started looking at a series of extremely suspicious cases that had been brought against the Administration's political adversaries. I examined the case of Georgia Thompson in Wisconsin, Cyril Wecht in Pennsylvania, Paul Minor in Mississippi, Geoffrey Fieger in Michigan and then came to Don Siegelman in Alabama.

My perspective on this story was very different from that taken by major market Alabama print media. They viewed it as a local political corruption story, and the papers involved, led by the Mobile Press Register and the Birmingham News, seem to start with the assumption that Don Siegelman was a corrupt politician. In fact, if you track their reporting almost from the beginning of his administration, that was a consistent message. I counted more than one hundred stories in the Press-Register alone with a similar theme of corruption, mostly relating to no bid or allegedly bid-rigged contracts. The reports were filled with insinuations that these contracts were sweetheart deals for Siegelman supporters. When an investigation into the Siegelman case began, usually brought by Alabama's attorney general, these two papers seemed to know every detail about it. They had copies of documents which were subpoenaed by the grand jury. They knew what witnesses had been called before the grand jury. They knew what the witnesses had said. They knew the claims that the prosecutors were developing.

Now there are two ways that could have happened. One is that the intrepid reporters involved were the hottest thing since Clark Kent, with his x-ray vision to boot. The other is that they were being fed information by investigators or prosecutors handling the cases. That's the explanation that makes sense to me.

There's nothing unethical or improper about reporters getting such information; in fact, editors reward reporters who can forge such contacts and gather such information. But it is illegal for the prosecutors or investigators to provide it. In fact, it's a crime for them to reveal grand jury materials, and it's highly unethical for them to feed materials to the press.

Reporters, however, like to protect their sources, and they begin to develop an investment in sources whose materials they go to press with. We can call that the "buy in." I reviewed these accounts with some of my researchers at Harper's. I found a remarkable amount of "buy in" and short shrift given to the defense. The presentation of facts from the case was, in my view, consistently skewed, sometimes dramatically, in favor of the prosecution. And vital information about the defense was withheld.

I went back and looked at the coverage of a number of other cases involving the prosecution of political figures in Alabama: Rich-

mond Flowers and Guy Hunt - Flowers received a presidential pardon and was the subject of a CBS docudrama entitled "Unconquered." It's pretty clear that he was the target of a politically motivated smear. Guy Hunt, a Republican, was brought down in a highly aggressive prosecution pursued by Attorney General Evans, a Democrat. He was also pardoned, and the case brought against him seems marginal at best.

Has Alabama developed a tradition of political prosecutions? A tradition in which political parties turn quickly to the criminal justice system to take out a powerful opponent? There seems to be a lot of evidence for that proposition. It's something that Alabamians should care about. A government that turns the tools of its criminal justice system on political adversaries is undermining the roots of democratic society. Or perhaps I should quote my friend Michael Mukasey in his recent speech in San Francisco, "A politically motivated political corruption investigation is just corruption by another name." Exactly.

I started my review of the Siegelman case not looking at a series of questions designed to judge whether the prosecution was political. I used the same questions that the Department of Justice and Department of State use to help them decide whether they should cooperate when a request for assistance in a criminal prosecution comes from a less-than-democratic country. Much of this has to do with timing, circumstances, personnel and nature of charges.

1. Is the subject an opposition political figure of some sort?
2. Is the "crime" that has been charged something applied uniformly, or used just to persecute political adversaries?
3. When was the probe initiated and how did it come to be initiated? Does it comply with established procedures and rules governing investigations? Charges brought against political candidates during an election cycle are particularly suspect. And the golden rule is that prosecutors investigate crimes, not people.
4. Was an intrusive investigations been conducted? That is, does the investigation appear geared to disrupting the political figure's work, for instance, as a parliamentarian or local official? Does it appear geared to embarrassing a candidate for election? Was the investigation played out in the media? Was the arrest and announcement of charges hyped in the media? Is the allocation of resources and materials for the investigation and prosecution "normal" or commensurate with similarly charged crimes?
5. Is the trial open to the public? Is the presentation of evidence open to the public? Has a gag been imposed on the defense counsel? Did the prosecutors engage in questionable conduct in picking a court and a judge? Was the defendant granted freedom pending trial in order to assist in the presentation of his defense or appeal?
6. Is there a political tone to the prosecutor's presentation of his case? Does he speak of a political party or movement as "cor-

rupt" rather than the specific individuals charged? Is there evidence to show that the prosecutor discussed the case with Government figures outside of the prosecution? Were senior political figures exercising influence in the prosecution?

7. Was the defendant or his counsel the subject of harassment, threats, robberies or break-ins?

8. Does the prosecution run parallel with a political campaign which is being run by the Government or the Government party? Is the prosecution being cited as evidence of "corruption" by the opposition? Does the Government appear to have access to the prosecution's evidence? Does it have prior knowledge that charges will be brought? Is this information used for a political purpose?

9. Does the media have prior knowledge of criminal investigations, of charges brought, of evidence which will be used? Does the media quote Government officials or prosecutors in connection with pending cases?

When I applied this test to the Siegelman case, it achieved a score suggesting a high probability of political manipulation.

About that time, the account of a Rainesville Republican attorney, Dana Jill Simpson, appeared. She stated that she had been on the line during a phone conference in the days right after the 2002 election. Bill Canary, the state's leading Republican campaign strategist and a close friend and business associate of Karl Rove, stated that he had spoken with Karl, that Karl had spoken with Justice, and that "his girls" would be taking care of Siegelman. Karl as we learned was Karl Rove. Canary's wife, Leura was the U.S. Attorney in Montgomery who brought the second Siegelman prosecution, and Alice Martin, a close confidante and client of Canary's, was the U.S. Attorney in Birmingham who brought the first Siegelman prosecution.

The allegations that Simpson made about Rove's involvement matched a pattern that was emerging from an investigation by the House Judiciary Committee relating to the U.S. Attorney's scandal—that pattern showed that Karl Rove and Harriet Miers were closely monitoring political cases brought by U.S. attorneys across the country, and documents showed that they were intervening in these cases. As we know, they compiled a list of 26 U.S. attorneys to be axed, and the documents suggest (though few have been turned over) that bringing politically motivated cases was a prime consideration. For instance, Steven Biskupic in Milwaukee and Dunn Lampton in Mississippi were on the list and then dropped. What happened in between? Biskupic brought the case against Georgia Thompson, which furnished essential campaign fodder for the Republican effort to take the statehouse in Madison. Lampton brought the case against Judge Diaz and Paul Minor that provided campaign fodder for Hailey Barbour's successful effort to take the statehouse for the GOP in Jackson.

About this time I conducted an interview with James Moore, a Texas reporter who had spent a great deal of time reporting on Karl Rove

and his campaign business, that Rove had in used similar techniques to affect an election campaign he managed in Texas. He had launched a federal criminal probe of his adversary and then had fanned details about it to the press. When asked questions under oath about it, Rove first resisted testifying and then feigned a loss of memory. So the Simpson allegations matched an established Rove modus operandi.

I communicated with Simpson and got many other details of her case. Through the summer I researched them with my colleagues.

I was particularly struck by the way the prosecutor handling the case, Louis M. Franklin, behaved. I asked several career prosecutors who had managed public integrity cases how they would have reacted to these developments. I got the same answer: assign a couple of FBI agents to interview Simpson, look to see what evidence she had, and interview the other figures involved to nail things down. However, Franklin reacted from the first instant by disparaging and attacking Simpson. In fact he uttered an impressive number of erroneous statements in a strange effort to put out the fire lit by Simpson's statement. Franklin seems particularly concerned about protecting, rather than investigating, Bill Canary. And of course, Bill Canary was the husband of Franklin's boss.

In my mind, the Siegelman story was not the saga of a corrupt politician. It was the story of an investigation, prosecution and trial conducted in a highly irresponsible and unethical fashion, and in all likelihood as the result of political manipulations.

As facts unfolded through the summer and fall, the two major Alabama newspapers involved treated this like a nightmare. They didn't fully report the facts, and as concerns were raised, they got a dismissive brush-off. Editorials boomed about the need to respect the judgment of an Alabama jury. That was truly remarkable, since these same papers had railed against irresponsible Alabama juries for years in their support of the tort reform crusade. It evidently wasn't Alabama juries they were concerned about; it was the result that they wanted. Of course, these papers never reported the details of very serious allegations of jury tampering brought in the case. And they never told their readers of the substantial evidence that the judge hearing the case was biased. Judge Fuller was a member of the Alabama G.O.P.'s executive committee until shortly before he came on the bench; he had managed two political campaigns in which Siegelman and two other defendants had appeared campaigning for the opposition; he had told a local TV station that he believed that a state audit of his records as a district attorney was "politically motivated" (suggesting that he bore a grudge against Siegelman). Moreover, Fuller had been the target of a lengthy complaint charging criminal conduct filed by a Missouri attorney and filed with the Justice Department's Public Integrity Department, the same office which brought the case and insisted that it proceed before him. All of this was highly irregular and a violation of basic rules of judicial and Justice Department ethics, which mandated his recusal from the case. All of this went unreported in the major Alabama papers.

As I studied these matters, I passed them to investigators for the Judiciary Committee in Washington, and I shared them with a number of prominent retired attorneys general and federal prosecutors. What I heard from them confirmed my suspicions. The case was riddled with gross irregularities from the beginning. No step along the way had been conducted in accordance with clear Justice Department guidelines. Evidence of political manipulation could be found at every turn. Every former prosecutor I consulted told me the same thing: "No independent federal prosecutor ever would have brought these charges."

Fifty-two former attorneys general then filed a petition with Congress demanding an independent investigation of the case. Nothing like this had ever happened in the history of the Republic. How did Alabama newspapers report this? For the most part, they didn't. When they did, the report dismissively noted that the group was "mostly Democrats." Yes, in fact most American attorneys-general are Democrats. But one of the leaders of the group was Grant Woods, the Republican former attorney general of Arizona, a national co-chair of the McCain for president campaign, and a man who certainly figures on McCain's shortlist to be the next attorney general. That was another inconvenient fact. It also was not worth reporting, evidently.

Whenever a story broke which contradicted the prosecution's claims, or raised strong questions about it, it simply didn't get reported. For instance, a motion was filed in the case involving Gary White, a Jefferson County Commissioner. A sworn statement attached to it charged that a prosecutor and an investigator working on the Siegelman case has used improper coercion to extract false testimony from White in an effort to bolster the prosecution's case against Siegelman. The judge, reviewing the affidavit, directed a new trial and went on to observe that he was extremely disturbed by the allegations against the prosecutors who brought the case against Siegelman. He noted that they constituted a "prima facie case of impermissible conduct" by the prosecutors. This remark was included in a published opinion. The Birmingham News, which had taken more than 150,000 words to reporting on the White case, suddenly lost its voice. Not a word was reported.

I am convinced that the local press fell down in its responsibility to properly report the Siegelman case. And at this point the national media is stepping in. CBS, MSNBC, CNN, the New York Times, Washington Post, Time magazine, Vanity Fair, the Los Angeles Times are all working on feature reporting on this case. The House Judiciary Committee majority issued a report dealing heavily with the Siegelman case last week, and it is planning hearings on the case. Karl Rove, who sits at the core of the case, had his lawyer told Dan Abrams he'd gladly answer the Judiciary Committee's questions. As soon as the Committee issued its letter, he changed his mind. Yet Karl Rove, who won't say a word under oath, has no problem spewing thousands of words in the pages of Gentleman's Quarterly and other magazines and newspapers. Rove has no fear of talking about the case; he's afraid of doing so under oath. That's very instructive.

Throughout the country, media is in the process of historical consolidation. We see fewer publications. Advertising revenue is falling. Money to fund investigative journalism and foreign bureaus is drying up. Most people in the profession recognize that times are tough, and the news business is in the process of transformation.

The Siegelman case shows us some of the downside of this trend. The print media market in Alabama is dominated by Advance, an S.I. Newhouse owned newspaper chain. It controls the Mobile Press Register, Birmingham News and Huntsville Times. Only the Montgomery Advertiser is outside of the clan. In any event, however, Advance papers dominate the state's political coverage. S.I. Newhouse does not straight-jacket his newspapers. Many of them are family papers from way back, and the Newhouse regime allows the old owners to exercise control as long as the papers run profitably. So it's been the preserve of the publishers with a very strong political orientation. The political reporting of these papers is slightly more subtle than in the heyday of Bourbon politics, but coverage of the Siegelman case provides a strong example of its political orientation. There are of course other voices, the independent newspapers, mostly in the state's small cities and towns—including the Decatur Daily and Anniston Star, two of the best small city newspapers in the United States, but these papers lack the resources to engage in heavy coverage of political events in Montgomery.

The result is that what Alabamians learned about the Siegelman case largely came through the reporting of the Birmingham News and the Mobile Press-Register. A more diverse media market, with different editorial perspectives, might have avoided the misperception of the case that resulted.

In overcoming and contradicting their message, new media played a key role. I use this expression the way the Pentagon does, to refer to internet-based publications. This includes local entrepreneurs, the internet-based publishing of established publications and new internet-only publishers. These publications were ignored and disparaged by the large-market Alabama papers, but were picked up in a number of small town papers, and ultimately came to the attention of national media. When the story began to unravel, the big two reacted very defensively. They devoted space not to investigating the allegations, but to attacking those who made them. They didn't pursue the story; they viewed the existence of the story as a threat.

This was one of the rare points at which Alabama developments were catapulted into the national headlines, but at this critical moment, the local Alabama print media was unable or unwilling to come to grips with the emerging story.

What lessons can we cull from this? I start with the assumption that the local media in Alabama is too willing to accept at face value statements that come from those in government. They fail to probe and question. But that explanation doesn't give us the whole story. As I noted, the Mobile Press-Register did its hundred stories on contracts and corruption in the administration of Don

Siegelman. His successor has actually awarded more no-bid contracts than Siegelman, in fact substantially more in his first term alone. How many stories did the Mobile Press-Register run? None. It did run 4 stories in his second term. Still, it's hard to understand this as reflecting anything other than political direction.

The new media played an important role, but it can't be oversold. The internet is filled with a lot of dubious material, and websites are only as good and reliable as the people who post there. So there are superb investigatory journalists out there, but there is also a lot of misleading rubbish. It requires discrimination to work through the mass. The internet journalists excel at critiquing the work of on-the-ground journalists - pointing to the missing facts, the overlooked documents, the skewed perspective. But they can't supplant the local paper writer.

The print media world may take a long time to die, but it's definitely in a waning period. Most publications are now pursuing a strategy that includes both online and paper publication. It's likely that over time we will see a gradual migration of resources and talent to the online side, and that the divide will not be complete. That is, writers will file long-form journalism and will post more blog pieces. This mix is emerging as a model in publications across the country. The upside: more real-time publishing, greater volume, more depth.

My advice to you: Take a critical attitude towards what you read, all of it, including what I write. If you see something you think is wrong, write an email or a letter and complain about it. Be polite, come straight to the point, and try to get your idea across in 150 words or less. These messages get read and have impact even if they don't all get published.

Also enter the world of the internet. You can pick up the morning paper and have a cup of coffee. But take a bit of time to expand your horizons. The New York Times, Washington Post, Wall Street Journal and Financial Times are papers I read every day-of course not every article, but everything that I'm tracking. The internet makes it possible to do wherever you are. It is making our country a smaller place, and our connection to the world steadily more important.

But above all we should keep in mind the role the press plays in our democracy. As Jefferson wrote to Lafayette: "The only security of all is in a free press. The force of public opinion cannot be resisted when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary, to keep the waters pure." Jefferson preferred white waters, an active press; several times he referred to the press as a "censor," by which he meant an institution designed to uphold public virtues, and particularly to keep those in public office operating to the standards expected of them. That is the role of watchdog, which is essential to a press that serves a democratic society.

Like no other place in Alabama, citizens of Huntsville should realize that. The four cities of Alabama stand each for a different age. Mobile was the city of the creole world, facing the Gulf of Mexico, the spot from which the first colonization proceeded. Montgomery was the heart of the old plantation economy in the Black Belt, the cradle of the Confederacy and the ideas that bore it. Birmingham, which Harper's called the city of perpetual promise back in 1937, saw the introduction of industry, labor unions, and all the things positive and negative that go with a modern urban landscape. But Huntsville is the city that helped put man in space and propel the country into a new age. It has become Alabama's brains. And it needs to work hard to move this state towards a future that is worthy of its people.